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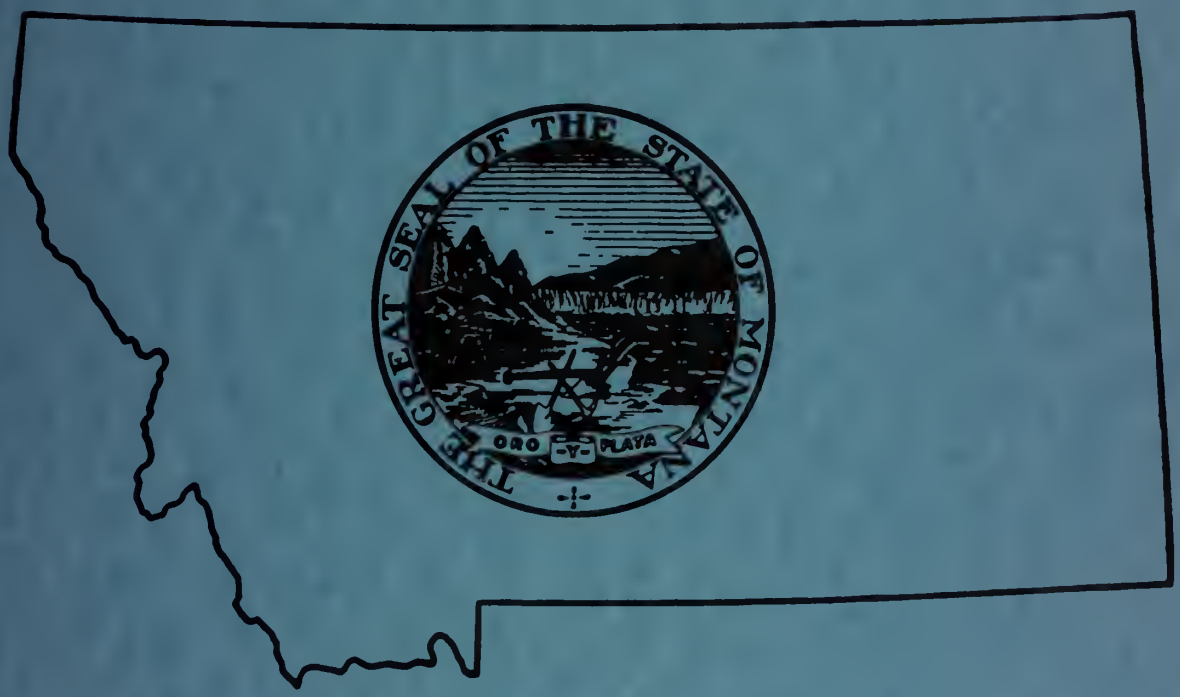
MONTANA CORPORATION LICENSE TAX



Montana Legislative Council

October 1968

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MONTANA CORPORATION LICENSE TAX

A REPORT TO THE FORTY-FIRST LEGISLATIVE ASSEMBLY

by the

MONTANA LEGISLATIVE COUNCIL

October 1968

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To Members of the Forty-First Legislative Assembly:

Few issues faced by the Legislative Assembly are more controversial and, at the same time, more complex than taxation. This is particularly true regarding the taxation of corporate income. The statutes under which corporations are taxed are complex, equity decisions are difficult, and few guidelines exist which can be applied to all corporations in determining how they should be taxed. This report contains a vast amount of statistical data on the taxation of corporate income in Montana and should be of lasting benefit to members of the Legislative Assembly in their consideration of corporate taxation. In addition, the report contains a number of changes which the Council feels will improve corporate income taxation in Montana.

Respectfully submitted,

SENATOR DAVID F. JAMES
Chairman
Montana Legislative Council

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1967 - 1968

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SENATE RESOLUTION NO. 36
Introduced by Groff

A RESOLUTION OF THE SENATE OF THE STATE OF MONTANA REQUESTING THAT THE LEGISLATIVE COUNCIL CONDUCT A COMPREHENSIVE STUDY OF THE TAXATION OF CORPORATIONS IN MONTANA.

WHEREAS, during the 1965-66 interim the Montana Legislative Council, with the assistance of a seven member Task Force of professional economists, conducted a study of taxation in Montana; and

WHEREAS, although the Task Force compiled a vast amount of data on taxation in Montana, limitations of time and data prevented any substantial consideration of the taxation of corporations in Montana; and

WHEREAS, because of these limitations, the study is essentially a study of the taxation of individuals in Montana; and

WHEREAS, the seven member Task Force noted that "considerable improvements in reporting business expense and incomes can be made by simply having additional qualified personnel to audit returns not only for errors but for substance;" and

WHEREAS, before reasonable conclusions can be drawn and tax policy formulated, the Legislative Assembly must have much more information on the taxation of corporations than is presently available.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE OF THE STATE OF MONTANA:

That the Legislative Council is requested to conduct a comprehensive study which shall include all aspects of the taxation of corporations in Montana.

BE IT FURTHER RESOLVED, that the study shall investigate the possibility of recommending federal legislation requiring corporations operating in interstate commerce, to show in their federal income tax returns, whether single or consolidated, an allocation of income from and costs in each of the various states in which such corporation and/or its affiliates operate.

AND BE IT FURTHER RESOLVED, that the Legislative Council shall employ any necessary consultants in making this study and prepare a printed report of it to the Forty-first Legislative Assembly.

HOUSE RESOLUTION NO. 24

Introduced by Lucas, Goan, Nichols, and Schye

A RESOLUTION OF THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE LEGISLATIVE COUNCIL TO STUDY AND RECOMMEND REVISIONS TO THE MONTANA LAWS RELATING TO THE TAXATION OF CORPORATIONS.

WHEREAS, there is a need to establish equity in taxation among all corporations doing business in the State of Montana, and

WHEREAS, many large and small Montana corporations pay a significant tax to the state of Montana at this time, and

WHEREAS, some large corporations do not appear to pay their fair share of corporate taxation based on the volume of their business and reported earnings, and

WHEREAS, there is a need to assure that non-resident corporations doing business in Montana who either do not file corporation license taxes rates or do not appear to pay an amount based equitably upon their earnings or volume of business, are properly taxed, and

WHEREAS, it may be possible to modify Montana laws or administrative practices to assure that equity of tax collections is achieved.

NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Montana Legislative Council shall, during the 1967-69 biennium, study Montana's method of corporate taxation and collections and shall present to the 1969 legislative session recommendations for improving both the collections and assessment of corporate license taxes in Montana.

INTRODUCTION

This study of corporate taxation in Montana was conducted in compliance with two resolutions of the 1967 Legislature. Senate Resolution No. 36 noted that due, in part, to limitations of time and data, the tax study conducted by the Legislative Council during the 1965-66 interim was essentially a study of the taxation of individuals. The resolution also noted that the Legislative Assembly must have more information on the taxation of corporations before reasonable conclusions could be drawn. The Council was requested to conduct a comprehensive study of all aspects of the taxation of corporations in Montana, including the possibility of recommending federal legislation that would require corporations to show in their federal income tax returns an allocation of income and costs in each of the various states.

Although quite similar to Senate Resolution No. 36, House Resolution No. 24 is directed toward a study of the corporation license tax. The resolution noted that there is a need to establish equity in corporate taxation. Some large corporations do not appear to be paying their fair share of corporate taxes based on the volume of their business and reported earnings. There is a need to insure that nonresident corporations are properly taxed; and it may be possible to modify Montana laws, administrative practices, or both to insure that equity is achieved in corporate taxation. The resolution asked that the Council present recommendations to the 1969 Legislature for improving the assessment and collection of corporate license taxes in Montana.

In addition to the Legislative Council study requested by the two resolutions noted above, House Resolution No. 29 asked the State Board of Equalization to revise the forms used for reporting corporation license taxes due, take other steps to improve administration of the tax, and report action taken to the Council together with recommendations for any additional suggested changes that would require legislation. Because much data for the Council study were compiled by the Board, the Council and Board agreed that a joint study would be made of the corporation license tax. They also agreed that joint recommendations would be made whenever possible.

It should be noted that Senate Resolution No. 36 asked for a study of "all aspects of the taxation of corporations in Montana." A study of this scope was not possible due to limitations of time and staff available. Because House Resolution No. 24 referred only to the corporation license tax and because this tax was emphasized in Senate Resolution No. 36, the study was restricted to the corporation license tax only.

The Council wishes to thank the State Board of Equalization for their assistance and cooperation during the conduct of this study. Particular thanks are due Mr. Howard Lord, Chairman, and Mr. Howard Vralsted and Mr. Gerald L. Foster of the Income and Corporation License Tax Department.

The Council also extends its thanks to Dr. William Diehl, Director of the Bureau of Business and Economic Research, University of Montana for his extensive assistance in the study. Dr. Diehl, in addition to acting as a general consultant to the Council, prepared and analyzed the statistical data presented in this report.

Chapter I
TAXATION OF CORPORATE INCOME

General[1]

The origin of state income taxation extends back to the seventeenth and eighteenth centuries in the United States. In the 1840's, six states (Pennsylvania, Maryland, Virginia, Alabama, Florida, and North Carolina) enacted levies which are considered the first state income taxes. During the Civil War, revenue pressures induced six additional states to adopt income taxes (Georgia, Missouri, Texas, Louisiana, West Virginia, and Kentucky). Following the war, however, a number of problems plagued these tax schemes, and, due in part to declining yields, by 1911 only five states had any kind of income tax; only Virginia could say that its income tax yield was significant. Generally, income taxes prior to 1911 were unsatisfactory, and economists condemned the taxes as impractical, ineffective revenue sources.

Growing pressures for revenue, however, led to experimentation in some jurisdictions. In 1901, Hawaii instituted an income tax modeled after the federal tax of 1894, even though that tax had been held unconstitutional. The Hawaii tax levied a 2 percent flat rate on personal and corporate income. In spite of this, not until after the Wisconsin income tax law of 1911 proved successful did the states begin to seriously consider instituting income taxes.

The 1911 Wisconsin tax, sometimes called the first modern state income tax, was intended to provide a workable and equitable method of taxation to replace the personal property tax. The taxation of intangible personal property and certain classes of tangible personal property had proved a failure, and the inequities caused by this tax had resulted in considerable discontent. Moreover, growing governmental activities and state public expenditures created an urgent need for radical changes of the property tax or replacement of it with a new source of revenue.

After the state Constitution had been amended, Wisconsin adopted a graduated income tax on personal and corporate income. The success of the Wisconsin measure was so apparent that almost from its enactment the income tax experienced a wave of popularity. The wave was heightened by enactment of the federal income tax in 1913, which made states even more aware of the revenue possibilities of income taxation.

Constitutional provisions, however, hindered the development of state income taxation. A constitutional amendment was necessary in Wisconsin, and similar problems were encountered in other states. One result of these constitutional barriers to direct corporate income taxes was the use of "franchise" or "privilege" taxes measured by net income which were considered to be indirect taxes. States adopting these taxes followed the 1909 federal example of an "excise" tax on corporations measured by net income. This tax was held constitutional by the Supreme Court as an indirect tax and was subsequently replaced by the federal direct income tax structure. Several states followed the federal example and placed levies measured by net income on the privilege of incorporation or the privilege of doing business within the state.

The revenue produced by corporate income taxes encouraged a wider use of the tax. Virginia and Connecticut adopted direct corporate income taxes in 1915, and Missouri followed in 1917. Montana (1917), New York (1917), and Massachusetts (1920) enacted franchise taxes measured by net income. In the 1920's, many states did not enact corporate tax laws because they were satisfied with existing revenue sources or limited by constitutional prohibitions. During 1920-1928, only four states adopted the corporate income tax. In 1929 four more states enacted such laws; and by the end of 1929, seventeen states levied corporate income taxes.

Today, forty states have direct corporate net income taxes or franchise taxes which are measured by net income. Of these, California, Idaho, Minnesota, Oregon, Pennsylvania, and Utah have taxes that are termed "double-barrelled." These states impose both a direct tax and a privilege tax measured by net income. Since one of the taxes applies to classes of income or taxpayers not covered by the other, the taxpayer does not incur double liability. Minnesota was the first state to adopt the "double-barrelled" tax system (1933).

1. U.S. Congress, Special Subcommittee on State Taxation of Interstate Commerce, *State Taxation of Interstate Commerce*, (Washington: U.S. Govt. Printing Office, 1964) was relied upon for material in this and the following section, except as otherwise noted. Cited hereafter as *State Taxation*.

In most states, corporate net income taxes are accompanied by personal income taxes. Only four states (Connecticut, New Jersey, Pennsylvania, and Rhode Island) tax corporation income only. In some states, the tax has been made part of a more complex tax structure, so that its computation constitutes only part of the process of computing taxes due. For example, in New York a corporation pays either on net income or on employed capital, whichever produces the larger tax. In Massachusetts, five different measures (tangible property, net income, net worth, gross receipts, and a flat fee minimum) must be used to determine the tax.

Corporate Income Tax Rates

Most of the states that use a corporation income tax apply flat rates which, although usually low, have shown a tendency to increase slowly over the years. In 1929, the rates ranged from 1-5 percent and the median rate was 3 percent. By 1943, the highest rate in use was 8 percent and the median had increased to between 4 and 4.5 percent. Corporate income tax rates are shown in Table 1.

TABLE 1

STATE CORPORATION INCOME TAX RATES
JANUARY 1, 1968

*Alabama 5%

Alaska
18% of federal income tax

*Arizona[a]
1st $1,000 ..... 2%
2nd $1,000 ..... 3%
3rd $1,000 ..... 4%
4th $1,000 ..... 5%
5th $1,000 ..... 6%
6th $1,000 ..... 7%
Over $6,000 ..... 8%

Arkansas
1st $3,000 ..... 1%
2nd $3,000 ..... 2%
Next $5,000 ..... 3%
Next $14,000 ..... 4%
Over $25,000 ..... 5%

California[b] 7%

Colorado 5%

Connecticut[c] 5¼%

Delaware 5%

Georgia 5%

Hawaii
$25,000 or less 5.85%
Over $25,000 ..... 6.435%

Idaho[d] 6%

Indiana[e] 2%

*Iowa
1st $25,000 ..... 4%
Next $75,000 ..... 6%
Over $100,000 ..... 8%

*Kansas 4½%

*Kentucky
$25,000 or less 5%
Over $25,000 ..... 7%

*Louisiana 4%

Maryland[f] 5¼%

Massachusetts[g] 6.765%

Michigan[h] 5.6%

*Minnesota[i] 8.5%

Mississippi
1st $5,000 ..... 2%
Over $5,000 ..... 3%

*Missouri 2%

Montana[j] 5½%

Nebraska[k] 2%

New Jersey[l] 3¼%

New Mexico 3%

New York[m] 5½%

North Carolina 6%

*North Dakota
1st $3,000 ..... 3%
Next $5,000 ..... 4%
Next $7,000 ..... 5%
Over $15,000 ..... 6%

*Oklahoma 4%

Oregon[n] 6%

Pennsylvania[o] 7%

Rhode Island[p] 6%

South Carolina 5%

Tennessee[q] 5%

*Utah[r] 6%

Vermont[s] 5%

Virginia 5%

West Virginia[t] 6%

*Wisconsin
1st $1,000 ..... 2%
2nd $1,000 ..... 2½%
3rd $1,000 ..... 3%
4th $1,000 ..... 4%
5th $1,000 ..... 5%
6th $1,000 ..... 6%
Next $6,000 ..... 7%

SOURCE: Commerce Clearing House, *State Tax Guide.*

*States which allow a deduction for federal income taxes paid.

TABLE 1 (Continued)

a. Arizona: Rates shown are effective January 1, 1968.

b. California: Financial corporations other than banks are allowed a limited offset for personal property taxes and license fees. Minimum tax, $100.

c. Connecticut: If tax yield is greater, 2 5/8 mills per dollar of capital stock, surplus and indebtedness. Minimum tax, $30.

d. Idaho: Each corporation filing return pays additional $10.

e. Indiana: Domestic and interstate corporations pay a tax of 2% of adjusted gross income from sources within Indiana.

f. Maryland: Domestic corporations are allowed credit for so much of their franchise taxes as are in excess of $25.

g. Massachusetts: Corporations pay an excise tax equal to the greater of the following: (a) $6.15 ($7 for taxable years beginning after 1967) per $1,000 of value of Massachusetts tangible property not taxed locally or net worth allocated to Massachusetts, plus 6.765% (7.5% for taxable years beginning after 1967) of net income; or (b) $100, whichever is greater.
Interstate corporations not subject to the corporation income tax pay a tax of 3.075% (4% for taxable years beginning after 1967) of net income.

h. Michigan: The state tax on corporations and a 7% tax on financial institutions was effective January 1, 1968. In addition, cities are authorized to levy a 1% tax on corporations.

i. Minnesota: An additional tax of 1.8% for taxable years beginning after December 1, 1968, and prior to January 1, 1970. The basic rate and the surtax are increased 10% from January 1, 1961 to December 31, 1970. Minimum tax, $10.

j. Montana: For all taxable years ending on or after February 28, 1967. 5¼% to February 28, 1967. Minimum tax, $10.

k. Nebraska: Effective for income earned on and after January 1, 1968.

l. New Jersey: All corporations pay additional tax on net worth.

m. New York: Corporations are subject to a 5½% tax on net income or a tax on three alternative bases, whichever produces the greatest tax.

n. Oregon: Financial institutions, 8%. Minimum tax, $10.

o. Pennsylvania: Increased to 7.5% beginning January 1, 1969.

p. Rhode Island: 6% of net income or 40 cents on each $100 of corporate excess if tax yield is greater.

q. Tennessee: Insurance companies are entitled to credits for gross premiums taxes paid. Fees paid by state banks for the use of the State Banking Department are credited. Corporations are also subject to the tax on dividends and interest.

r. Utah: Corporations are subject to the 6% tax or a tax of not less than 1/20 of 1% of the fair value of tangible property in the state.

s. Vermont: Subject to reduction if there is sufficient surplus in the general fund. Minimum tax, $25.

t. West Virginia: Effective for taxable years beginning after June 30, 1967.

Three states, Georgia, Hawaii, and Oregon, have rates that are now lower than those levied in 1948. The elimination of the federal income tax deduction in two states (Georgia and Hawaii), however, more than offset this decreased rate for many taxpayers, thus placing two of the states among those whose *tax burden* has increased. In seven states, the tax rate has remained the same since 1948. Like the states where the tax rate has decreased, two states (Arkansas and Colorado) have eliminated deductions for federal income taxes paid and thus have actually increased the *tax burden.*[2]

In the remaining states, the rate of tax has increased over the past fifteen to twenty years. The degree of change has varied from state to state, however, and in several states the increase was further augmented by the elimination of deductions for federal income taxes.

In reviewing the rates shown in Table 1, account must be taken for variations in exemptions, deductions, and credits which the different states allow and which may serve to reduce the actual tax impact. The most important deduction is that for federal income taxes. Twelve states allow this deduction (Alabama, Arizona, Iowa, Kansas, Kentucky, Louisiana, Minnesota, Missouri, North Dakota, Oklahoma, Utah, and Wisconsin).

In summary, over the last fifteen to twenty years corporation income tax rates have tended to continue upward. During that period, the increase in rates has been accentuated to the extent that rate-reducing provisions, such as the deduction of federal taxes, have been eliminated.

Multistate Corporations Subject to State Taxation

Since 1911, when states first began to tax the income of multistate corporations, the way in which they can and should levy the tax has been a subject of controversy. Until the 1930's, there was a general rule that states could not impose a tax which constituted a "direct burden" on *interstate* commerce because the power to regulate that commerce was exclusively vested in Congress by the federal Constitution. In 1938, the United States Supreme Court altered its approach and began applying a test of "cumulative burdens." A state tax would be upheld if it did not impose a risk of mutiple taxation of the same income. In 1946, however, the Court again moved toward a test of "direct burden."[3]

Until 1959, the commerce clause of the federal Constitution was interpreted as prohibiting states from taxing income earned exclusively from *interstate* commerce; the limits of state power to tax *interstate* commerce were believed to be found only in the federal Constitution and court decisions interpreting it. Under these decisions, two distinct bodies of law developed. One dealt with the direct tax-franchise tax differences, the second dealt with the extent to which a taxpayer must be involved in business before a state may impose taxation.

A 1959 decision of the Supreme Court significantly changed the general belief that states could not tax income earned exclusively in interstate commerce. In *Northwestern States Portland Cement Co. v. Minnesota,* the Supreme Court ruled that the net income from interstate operations of a foreign corporation may be subject to state taxation if the levy is not discriminatory and is properly apportioned to local activities within the state to form sufficient nexus (connection), thus extending state taxing powers substantially.[4] The company involved was an Iowa company that maintained a sales office and solicited orders in Minnesota. An earlier decision clearly indicated that such a corporation would not be liable to a privilege tax.[5] The question of whether a company must pay a tax measured by income, therefore, may depend upon whether the tax is a *direct income tax* or a *privilege tax* (such as the Montana corporation license tax).

Most states that impose a tax on the income of corporations apply the tax on income. Others, like Montana, measure the tax by net income but technically imposed the tax on the privilege of doing business. Montana statutes require corporations engaged in business within the state to pay "as a license fee for carrying on business" the tax rate specified by law. Even though measured by income, the Montana corporation license tax is called "an excise tax" rather than an income tax. Rather than being based upon the privilege of doing business, direct income taxes are levies on the income itself or on the right to receive income. The distinction between privilege taxes measured by net income and direct net income taxes is important because: (1) each tax is subject to different constitutional

2. Discussion from *State Taxation* updated.

3. Indiana Commission on State Tax and Financing Policy, *Business Taxation in Indiana,* (Indianapolis: Indiana University, 1966), p. 69.

4. 358 U.S. 450 (1959).

limitations; and (2) an income tax may be levied on the receipt of income, but a privilege tax may be levied only if the taxpayer actually "does business" in the taxing jurisdiction.

In some cases, income which cannot be taxed under a direct income tax statute may be taxable under a privilege tax statute; in other cases, the opposite is true. For example, certain items of income, like that from obligations of the United States, are exempt from direct income taxation on the theory that the tax would be an unconstitutional impediment of borrowing power.

A privilege tax on that same income, however, might be valid because the incidence of the tax is on doing business rather than directly on the income of tax exempt property. In contrast, a privilege tax cannot be imposed on a corporation engaged in an operation exclusively *interstate* in nature. A privilege tax may be imposed only if the corporation engages in some separate and distinct *intrastate* activity in the taxing state.

To be subject to a privilege tax, a corporation must be engaged in business within the state and derive income from that business. A corporation is doing business if it is actively engaged in carrying on the business for which it was organized. Isolated but substantial income-producing activities also constitute doing business. For foreign corporations, the requirement of doing business is complicated because they must be doing business in *intrastate* commerce within the state as opposed to doing business only in *interstate* commerce.

PUBLIC LAW 86-272

Following *Northwestern*, the Supreme Court upheld a tax on an interstate motor carrier, dismissed an appeal imposing the Louisiana net income tax on a Kentucky distiller who had salesmen in Kentucky, and allowed Louisiana to tax a Delaware corporation that had salesmen but no office in Louisiana.[6] These decisions focused the attention of the business community and Congress on the taxation of multistate businesses.

In response to recommendations made at public hearings that federal legislation impose minimum standards for the imposition of state income taxes, Congress enacted Public Law 86-272 in 1959. The law precludes a state from imposing an income tax on a business if its only activity within a state is soliciting orders or using an independent contractor to make sales within the state. The constitutionality of the restrictions embodied in Public Law 86-272 has been challenged, but at present Congress appears to have the power to restrict the rights of states to tax income from *interstate* commerce.

In addition to restricting state taxation of interstate businesses, Public Law 86-272 required the House Committee on the Judiciary and Senate Committee on Finance to:

> . . . make full and complete studies of all matters pertaining to the taxation by the States of income . . . from the conduct of business activities which are exclusively in furtherance of interstate commerce . . . for the purpose of recommending to the Congress proposed legislation providing uniform standards to be observed by the states in imposing income taxes on income so derived.[7]

This study was completed in 1965 by the House Committee on the Judiciary Special Subcommittee on State Taxation of Interstate Commerce - known generally as the Willis Subcommittee after its chairman, Representative Edwin E. Willis.

THE WILLIS STUDY AND PROPOSED LEGISLATION

The study focused on three major areas: (1) the nexus (connection between taxpayer and taxing jurisdiction) question; (2) methods used to apportion income; and (3) the legal definitions of taxable income. Some of the important findings were:

1. *Interstate* companies are typically not very large. Over one-half of the companies surveyed had gross receipts under $1 million, and more than five-sixths had gross receipts of less than $5 million.
2. The vast majority of *multistate* businesses are not equipped to deal with state and local taxation on a very complex level.

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5. *Spector Motor Service, Inc. v. O'Connor*, 340 U.S. 602 (1951).
6. *Business Taxation in Indiana*, p. 70.
7. *State Taxation*, p. 9.

3. Concerning the problem of nexus, the subcommittee found that between the immunity afforded mere solicitation and the liability attaching to an *intrastate* place of business lies a realm of doubt, which includes much of the activity engaged in by manufacturing and mercantile businesses in distributing their goods.

4. The present system for the division of income among the states in which a company operates is characterized by diversity and complexity. No consistent or coherent technique for relating the accounting concept of net income to geographic location has been achieved, and the lack of consistency in the rules for the division of income raises the possibility of overtaxation and undertaxation.

5. Tax compliance is especially difficult where the state definition of taxable income differs substantially from the federal definition.

6. As a practical enforcement matter, the income tax states have not been able to uphold their jurisdictional claims over many *interstate* businesses, even though they clearly have legal authority to do so. The degree of compliance is largely determined voluntarily by the taxpayer.

7. Noncompliance is evident from the widespread failure to report accurate sales factor numerators (actual sales in the state) for use in the apportionment formula. The major cause of these failures is the difference between company records and particular sales factor requirements.

8. The high ratio of compliance costs to tax liability indicates the undesirability of rigid enforcement under the present system and the need for simplification of the whole state tax system.

9. The existing structure of state income taxation results in substantial inequities among *interstate* companies and between *interstate* and *intrastate* businesses. Interstate companies as a group bear somewhat less than their fair share of the state income tax burden.

10. If a choice were made among three possible uniform (apportionment) formulas - a two factor formula containing only property and payroll factors, a three factor formula in which a sales-*origin* factor is added, and a three factor formula in which a sales-*destination* factor is added - it appears that for 26 of the income tax states less than one-half of 1 percent of total tax revenues would be involved in the choice, and that for only one of the income tax states would more than 1 percent of total tax revenues be involved . . . In short, as a factor to be weighed in choosing among alternative uniform schemes for the division of income for tax purposes, revenue considerations are very minor . . .

11. The computation by businesses of the property and payroll factors of income apportionment formulas generally presents no difficulties. For the very large companies, the sales factor can also normally be computed easily. However, small- to medium- size companies do not have sophisticated accounting equipment and often do not accumulate detailed sales data. For these companies, computation of any sales factor can often produce compliance costs that are "wholly disproportionate" to the tax liabilities involved. It must be concluded that the effect of cost consideration is to suggest the adoption of a formula consistent with a relatively narrow scope of state income tax liability.[8]

In 1965, Representative Willis introduced legislation, H.R. 11798, designed to implement most of the recommendations of his Subcommitte on the Taxation of Interstate Commerce. Early in 1966, the Subcommittee heard testimony on the bill from more than 200 witnesses, including governors, tax administrators, business representatives, lawyers, accountants, and professors. State officials were strongly opposed to the bill; the opinions of business representatives were divided. State officials objected to the measure because it would subordinate state administrators to the federal government. They also criticized the bill on the grounds that: (1) jurisdictional restrictions on the states' taxing power would compound the advantages of big business over small business; (2) the proposal to drop the sales factor and use only a two-factor formula based on property and payroll would deny market states an opportunity to tax; (3) a federal agency should not have authority to prescribe rules and perform other administrative functions with respect to jurisdiction and apportionment standards; and (4) the bill would interfere with, or negate, state efforts to secure a more favorable tax climate for industry.

Business representatives were less unanimous in their reactions to the proposal. Their major point of agreement was on the need for Congress to set up jurisdictional standards. Larger corporations tended to the view

8. *Business Taxation in Indiana*, pp. 73-74.

that the bill as a whole went too far and interfered too much with state taxing powers. They appeared to favor, or at least not object to, the three-factor formula for apportionment of corporate income.[9]

Because of the vigorous reaction to H.R. 11798, Representative Willis introduced a revised bill, H.R. 16491, in 1966. The major revisions in H.R. 16491 were: (1) elimination of the mandatory use of the federal income tax base; (2) elimination of the compulsory use of a two-factor apportionment formula; and (3) elimination of a proposed "Cooperative System of Interstate Sales Tax Collection."[10]

Congress adjourned shortly after H.R. 16491 was introduced, which precluded consideration of the bill. Representative Willis reintroduced the proposal in the 90th Congress in the form of H.R. 2158. As introduced, H.R. 2158 was identical to its predecessor, but a number of changes were made following introduction at the suggestion of state tax administrators and some representatives of the business communities. The House Committee on the Judiciary report on H.R. 2158 stated that the major amendments involved the extension of the state taxing powers beyond the limits prescribed in the original proposal. An expansion of the "business location" definition, for example, was said to extend state taxing jurisdiction to out-of-state companies and also lend additional protection to local companies from out-of-state competitors. Other amendments were said to facilitate the offering of tax incentives by the states and to clarify the effect of Public Law 86-272. These changes, however, do not overcome the state governments' major objection to the bill that federal legislation would subordinate the states to the federal government in the vital area of revenue. H.R. 2158 passed the House of Representatives on May 22, 1968, by a vote of 284 to 89, but the Senate failed to act on the bill.

The Multistate Tax Compact[11]

The basic objection to federal legislation voiced by the states is that it would reduce state financial autonomy substantially and make the states dependent upon the federal government in major areas of taxation. As an alternative to federal legislation, a Special Committee on Interstate Taxation was created by the Council of State Governments in 1965. With cooperation of the National Association of Tax Administrators, the National Association of Attorneys General, and the National Legislative Conference, the Committee drafted the Multistate Tax Compact. The compact is the result of two factors: (1) the desirability of achieving a significant measure of interjurisdictional compatibility in state and local tax systems; and (2) the likelihood that federal action would seriously curtail state and local taxing power if appropriate coordinated action is not taken by the states.

The objective of the Compact is to provide solutions for some tax problems and additional facilities to deal with a number of other problems in the taxation of multistate businesses. The Compact also provides a mechanism for dealing with multistate tax problems on a continuing basis and could help solve future problems.

A major improvement in the income tax field is incorporation of the Uniform Division of Income for Tax Purposes Act (UDITPA) provisions into the Compact. Under the Compact, a taxpayer could, at his option, use the UDITPA for allocation or apportionment of income. While retaining existing procedures for dividing income, states which become members of the Compact are required to make the UDITPA available to taxpayers wishing to use it. Because Montana uses the UDITPA, the Compact would not affect present state division of income procedures. In addition, the Compact aids uniformity by providing for advisory administrative rules applicable to uniform provisions of statutory law.

The Compact also incorporates a number of reforms already widely adopted. For example, it allows credits for sales taxes paid in other jurisdictions, provides for a small taxpayer to elect to pay a tax on gross sales in lieu of net income, and provides relief of vendors from collection of sales and use taxes upon good faith acceptance of an exemption certificate.

Some Compact provisions are self-executing; others require research or other activities. For example, the Compact makes single audits possible on a multistate basis for states who are parties to the cooperative audit article. The scope of these audits, however, is dependent upon further action by the governing commission established by the Compact.

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9. Tax Institute of America, "Aftermath of the Willis Report," *Tax Policy*, XXXIV, Nos. 7-8 (July-August, 1967), p. 11.
10. *Ibid.*, p. 12.
11. Complete text of the Multistate Tax Compact appears in Appendix A, below.

The Division of Income for Tax Purposes

For corporations engaged exclusively in *intrastate* business, the problems associated with dividing income do not exist. If a corporation is doing business in more than one state, however, a means must be devised for dividing the income subject to taxation among the states where business is conducted. Three general methods for dividing income of *multistate* corporations have been developed: (1) separate accounting; (2) formula apportionment; and (3) specific allocation. Separate accounting means simply that records are kept of income and expenses in each state. Some factors, such as administrative costs of a head office, must be divided among the states through the accounting system. The term "apportionment" is generally used to mean a division of income by formula apportionment; "allocation" is generally used to mean specific allocation. Both terms have also been used to mean the entire process of dividing income for tax purposes.[12]

To illustrate the possible different effect of using apportionment or allocation, one writer cited the following example. Assume that a merchant operated two stores, one in State A and one in State B. Each state allows a choice of allocation or apportionment, but apportionment is based on payroll only. Although the payroll is identical in each state, Store A nets $10,000 and Store B nets $30,000. Allocation would give State A $10,000 taxable income and State B $30,000 taxable income. Because payrolls are identical, however, under apportionment (using payroll only) each state would have $20,000 taxable income. Taxable income could be $50,000 if State A required apportionment and State B required allocation.[13] Use of an apportionment formula consisting of more than one factor would, of course, complicate the example.

Montana utilizes separate accounting, apportionment, and allocation in the taxation of multistate corporations. Moreover, Montana law allows payment of taxes as a small business corporation under certain circumstances. To be classed a small business, a corporation must: (1) have not more than ten shareholders; (2) not have as a shareholder a person (other than an estate) who is not an individual; (3) not have a nonresident alien as a shareholder; and (4) have only one class of stock.[14] If these conditions are met, the corporation may elect to file as a small business, pay the minimum $10 filing fee, and allow its shareholders to file and pay taxes under the Montana individual income tax laws.

Corporations engaged solely in *intrastate* business present no problem in dividing income for taxation. Multistate corporations, however, may use separate accounting or apportionment under certain circumstances. If income from sources within the state cannot be properly segregated from income outside the state, the income must be apportioned under rules adopted by the State Board of Equalization. If the Board is presented with evidence showing that income can be segregated, the Board must allow separate accounting.[15]

The Board has adopted rules that allow corporations not engaged in a "unitary" business to divide income by separate accounting methods. A "unitary" business is defined as one where operations within the state are dependent upon, or contributory to, operations outside the state or one where the business units within and outside the state are closely allied and not capable of separate maintenance as independent businesses. Using separate accounting, each "business income" item is segregated and directly allocated to its source.[16] Expenses, including a reasonable allowance for general overhead, are also segregated and deducted from gross income. Items of "nonbusiness income" are allocated in the same way as under apportionment procedures.[17] If accounting records are not adequate to permit segregation of income, the corporation must use the apportionment formula.

Using apportionment, Montana corporation license tax rules maintain a distinction between apportioned and allocated income in rules 1001 through 1019. Rents and royalties from real or tangible personal property, capital gains, interest, dividends, and patent or copyright royalties to the extent that they constitute nonbusiness income, must be *allocated* under rules 1006 through 1009. Business income is *apportioned* using the three factors (property, payroll, and sales) embodied in the Uniform Division of Income for Tax Purposes Act drafted by the

12. See also *State Taxation*, p. 159.

13. Donald K. Barnes, "Prerequisites of a Federal Statute Regulating State Taxation of Interstate Commerce," *Virginia Law Review*, Vol. 46, No. 6 (October, 1960), pp. 1275-76.

14. See Section 84-1501.1, R.C.M. 1947.

15. Section 84-1503, R.C.M. 1947.

16. "Business income" is defined as income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.

17. "Nonbusiness" income is all income other than business income.

National Conference of Commissioners on Uniform State Laws. To determine Montana tax liability, therefore, a multistate corporation first apportions business income using the three-factor formula. Each of the three factors is given equal weight, and the formula may be expressed as follows:

$$\frac{\frac{\text{In-state property}}{\text{Total property}} + \frac{\text{In-state payroll}}{\text{Total payroll}} + \frac{\text{In-state sales}}{\text{Total sales}}}{3}$$

To further illustrate the application of the apportionment formula, assume that a multistate corporation has in-state property of $200,000, in-state payroll of $30,000, and in-state sales of $500,000. Total factors are: property $800,000, payroll $60,000, and sales $1,000,000. Business income would then be apportioned as follows:

$$\frac{200{,}000}{800{,}000} + \frac{30{,}000}{60{,}000} + \frac{500{,}000}{1{,}000{,}000} = 41.67\%$$

The percentage figure obtained from this formula would be applied to net business income to compute business income taxable in Montana. After apportionment, nonbusiness income allocated to Montana is computed. The result is either added to or subtracted from the result of applying the apportioned business income to determine Montana taxable income. Although most firms apportion income using the three-factor formula, the Board may permit exclusion of one or more factors in the apportionment formula to fairly reflect the extent of the taxpayer's activity in the state. For example, a transportation company might apportion unitary net income on the basis of miles flown or revenue miles rather than use the normal three factors.

Since enactment of the Wisconsin corporation income tax in 1911, dividing income of multistate corporations has presented problems both to state tax administrators and taxpayers. The 1911 Wisconsin statute provided for division of income by separate accounting, specific allocation, and formula apportionment. These three methods remain the fundamental means of dividing income of multistate corporations for state taxation. By 1929, only two states were using three factors (property, payroll, and sales) in their apportionment formulas. At that time, four states used sales only, three states used property only, and eight states used various other factors. Since 1929 most states have shown a preference for the three-factor formula (property, payroll, and sales). Twenty states have now substantially adopted the Uniform Division of Income for Tax Purposes Act (UDITPA) which utilizes these three factors.[18] States that have not adopted the UDITPA may utilize these three or different factors for apportionment.

Apportionment factors used by states that have not adopted the UDITPA are shown in table 2, page 10.

As Table 2 shows, substantial differences exist in the factors used to apportion income for multistate corporations that are unitary. Statutes, rules, and administrative practices employed which are not reflected in the table undoubtedly compound the diversity. Each state that taxes multistate corporations has arrived at a method for apportionment which accounts for factors such as political acceptability, revenue needs, equity, administrative feasibility, and the like.

Ideally, any apportionment formula should give appropriate weight to the various factors which are responsible for income and should also be simple to administer.[19] The requirements may, however, be mutually inconsistent and a compromise between these goals is necessary. On the basis of a trial and error process, the "Massachusetts" formula evolved as the most common method of apportioning income utilizing the three factors of property, payroll, and sales. Use of these three factors presents problems to both administrators and taxpayers, but the use of additional factors might make the formula too unwieldly and cumbersome for effective administration and might also increase taxpayer compliance costs substantially. As one study noted:

> Admittedly, the use of a formula consisting of the above three factors [property, payroll, and sales] will not produce a meticulously precise and accurate determination of the income earned in any state. It will, however, apportion the income among the various states in which business is conducted in as reasonable and as approximately correct a manner as is practicably possible.[20]

Acceptance of the three-factor formula as reasonable and approximately correct, however, does not resolve all the administrative problems involved in taxing multistate corporations. It is now generally conceded, for example,

18. In West Virginia, the UDITPA is used for the allocation of nonbusiness income. Michigan has adopted sections of the act applicable to franchise, intangible, and business receipts taxes.

19. George T. Altman and Frank Keesling, *Allocation of Income in State Taxation*, (Commerce Clearing House, 1946), p. 107.

20. *Ibid.*, p. 108.

TABLE 2

APPORTIONMENT FACTORS USED BY STATES WHICH HAVE NOT ADOPTED THE UDITPA

January, 1968

Alabama	property, cost of manufacturing, sales	Mississippi[a]	sales, manufacturing assets, manufacturing sales
Arizona	varies	Missouri	sales
Colorado	property, sales	New Jersey	property, receipts, payroll
Connecticut	property, payroll, gross receipts from sales	New York	property, receipts, payroll[b]
Delaware	property, payroll, gross receipts	Pennsylvania	property, payroll, gross receipts
Georgia	payroll, gross receipts, inventory	Rhode Island	property, payroll, gross receipts
Iowa	sales	Tennessee[c]	Manufacturers: property, cost of manufacturing, sales Merchants: property, sales
Louisiana	property, payroll, sales	Vermont	property, payroll, sales
Maryland	property, payroll, sales	Wisconsin	property, cost of manufacturing, sales
Massachusetts	property, payroll, sales		
Minnesota	property, payroll, sales		

SOURCE: Commerce Clearing House, *State Tax Guide.*

a. Administrative formula.

b. Investment capital in securities is also used to divide investment income.

c. Both manufacturers and merchants use a factor representing sales to Tennessee customers.

that all property used should be included, whether owned by the taxpayer or not, but this principle remains debatable. Apportionment of payroll presents fewer problems than apportionment of property, but apportionment of sales can become complicated. Sales can be determined by the place where title passes, the place where orders are solicited, the place from which goods are shipped, the place where orders are received, the place to which goods are shipped, or other factors. Recently, the trend among the states has been toward a destination sales standard. This trend may be due, in part, to the UDITPA which contains a destination sales factor. When the UDITPA was drafted, the National Conference of Commissioners on Uniform State Laws rejected an origin test of sales on the ground that it would duplicate the payroll and property factors. There was also a feeling that the contribution of the consumer state should be recognized by attributing sales to those states.[21]

Admittedly complex, the procedures outlined above do represent a reasonable compromise between giving

21. *State Taxation,* p. 123.

weight to factors which contribute to income and administrative feasibility. If apportionment and allocation factors are accurately reported by taxpayers, returns can be reviewed for mathematical correctness with ease. Auditing interstate corporations, however, presents serious problems. Multistate corporations sometimes conduct operations on a large scale; the corporation may operate in states having sharp differences in methods used to divide income or it may have no income tax at all; and complete audits could be very costly.

In summary, corporations engaged in *intrastate* business only do not present division of income problems. The division of income for multistate corporations, however, presents a multitude of problems to tax administrators and taxpayers alike. Three general methods have been devised for dividing income of multistate corporations: (1) separate accounting; (2) formula apportionment; and (3) specific allocation.

Although various factors and methods are used by different states to divide income for taxation, there has recently been a trend toward use of the three-factor formula. Although not meticulously precise and accurate, the three-factor formula has evolved as the most reasonable and practical method of dividing income of multistate businesses for tax purposes. Auditing the records of multistate corporations is a complex and costly process.

Montana Corporation License Tax[22]

Most states that levy personal income taxes also tax corporate income. Montana is no exception. The reasons for such taxation are varied. Among them are assertions that corporations themselves have economic ability (even though they are owned by individuals), that if individuals are taxed corporations should be, and that the tax provides a good source of revenue.

The Montana tax is 5.5 percent of the net income corporations receive from their operations in the state, with a $10 minimum. Net income is defined as revenues less business expenses, but federal income tax paid is not allowed as a deduction. Corporations with ten or fewer stockholders may elect to pay the $10 minimum fee and file as a partnership for income tax purposes.

Net income from operations based solely in Montana is, of course, the total net income for *intrastate* corporations. But for corporations that do business in other states also, it is necessary to determine how much of the total corporation income was earned in Montana. Such interstate corporations may compute their income for Montana tax purposes in either of two ways. A corporation may keep separate books for its operations in Montana, or the firm may compute the percentages of its property, payroll, and sales located in Montana, compute the average of these three percentages, and multiply this average percentage by its total income. The product is the Montana share of the income.[23]

BURDEN DISTRIBUTION

Evaluation of the distribution of the corporate income tax depends on whether the tax is directly shifted forward to consumers in the form of higher prices. However, economists disagree considerably about whether the tax is shifted. If it is, the tax is a sort of sales tax with a regressive burden. Moreover, if it is shifted, it probably discriminates against the consumers and producers of particular products. Some industries have greater profits per dollar of sales, and consequently more tax to shift. Consumers of these products would bear a greater than proportionate share of the tax. If this tax burden reduced purchases of these products, the income of those furnishing inputs to the industry would probably go down. If all or part of the tax is not shifted, the burden of the unshifted portion falls on those who were stockholders at the time that the tax was increased or initially levied. Since the bulk of corporate stock is owned by people with incomes over $10,000 per year, the burden of the tax will be progressive. If the tax change is expected to remain, however, the immediate burden on the stockholders is likely to be considerably more than the tax, for the tax is likely to be capitalized. Capitalization occurs in the process of taking account of a tax in the price of an asset.

EFFECTS ON ECONOMIC BEHAVIOR

If corporation income taxation is shifted to consumers either immediately or over a long period of time, it will probably raise the price of some products more than others. Consumption of the items bearing the most tax is likely to be discouraged as compared with consumption of products bearing little tax. Productive resources will

22. Montana Legislative Council, *Montana Taxation,* Report No. 23, December, 1966, pp. 50-51. Discussion updated and supplemented.

23. For a more detailed discussion of the procedure used to divide income, see pages 8-11, above.

tend to move from higher taxed to the lower taxed industries. Such a reallocation of resources can be expected to reduce aggregate consumer satisfaction.

When the burden of the tax is not immediately shifted to consumers, it reduces the net rate of return from corporate investment. A lower rate of return may mean that fewer funds will be made available to finance corporate investment, and less investment will result. If less investment occurs, the levels of output and living standards will go down unless governmental fiscal policy counteracts the reduction in investment. Because of differences in the level of the tax from industry to industry, investment would fall more in some industries than others. This reallocation of resources would tend to penalize consumers of the output and owners of the inputs of the heavily taxed industries.

REVENUE FROM THE CORPORATION LICENSE TAX

During the period 1940 through 1964, revenue from the Montana corporation license tax increased from $688,000 to $5,051,000. Although tax collections have increased substantially as reflected by these figures, the revenue from the corporation license tax represented only 2 percent of total *state and local* tax revenue in 1940. By 1964, revenue from the corporation license tax had increased to 2.8 percent of total *state and local* tax revenue. Corporation license tax revenue 1940-1964 is shown below:

TABLE 3
MONTANA CORPORATION LICENSE TAX REVENUE 1940-1964

Year	Revenue (Thousand Dollars)	Percent of State and Local tax Revenue
1940	$ 688	2.0
1952	2,284	2.6
1954	1,812	1.9
1956	3,005	2.5
1958	2,358	1.7
1960	4,671	3.0
1962	4,535	2.7
1964	5,051	2.8

SOURCE: *Montana Taxation*, p. 18 and State Board of Equalization.

Although the corporation license tax provides less than 3 percent of total state and local tax revenue, it accounted for 6.7 percent of state government revenue in 1964. This percentage compares to about 7.0 percent for all states and 5.3 percent for the ten Western states for 1964. Seventy percent of the revenue from the corporation license tax is deposited in the state general fund, 25 percent is deposited in the common school equalization fund, and 5 percent is deposited in the long-range building fund.

ADMINISTRATIVE PROCEDURES

Corporation license tax returns are filed with the cashier of the State Board of Equalization. The cashier attaches a receipt to the return and deposits checks with the State Treasurer. Returns and the cashier's report are forwarded to auditors responsible for the corporation license tax.

When received by the corporation license tax auditors, an official receipt is prepared, the receipt number is entered on the return, and the total is balanced against the cashier's report. Receipts and returns are then reviewed by an auditor. In auditing returns, about 10 percent are corrected for errors and additional taxes are levied for 3-4 percent. Returns are then filed in the offices of the State Board of Equalization.

Once each year, usually in August, auditors check the Board files for delinquent corporations and mail notices to all corporations not current in filing returns. If no reply is received, after sixty days they send a final notice by certified mail that the corporation will be suspended if a return is not filed. After a corporation has been

delinquent for eleven months, the Board may take action to suspend the corporation. In 1967, for example, taxable year 1960 was reviewed and a number of corporations suspended. During early 1968, all corporations that have not filed returns since taxable 1961 and 1962 were contacted. The Board estimates that 75 percent of the corporations suspended have ceased doing business in Montana but failed to notify the Secretary of State of that fact.

If the Board discovers that a corporation is doing business but is delinquent, a field man from the Board is notified and asked to solicit the return. The procedure is used only about ten times each year. The Board may also request a copy of the corporation's federal return and estimate the Montana taxes due from that form. This is done from twenty to twenty-five times each year. Federal returns may be obtained from domestic corporations, but they cannot be obtained from foreign corporations. If taxes are not paid, the Board may file a lien for taxes due. A lien is filed only when absolutely necessary, however, and the corporation is contacted several times prior to this action.

To determine that all corporations authorized to do business in Montana are filing returns, the Board checks records of the Secretary of State each month. Board auditors review this information, eliminate tax exempt corporations, and request copies of the articles of incorporation or verification of federal tax exemption if doubt exists. The Board also reviews data from the withholding section, lists of bids received from the Highway Commission, and utilizes various other means to verify filing.

STATUTORY PROVISIONS TO ENFORCE COLLECTION OF CORPORATION LICENSE TAX

Section 84-1505, R.C.M. 1947, requires all corporations to compute the amount of tax due and remit that amount to the State Board of Equalization before the fifteenth day of the fifth month following the close of the taxable period. If the tax is not paid by that date, the Board may assess a penalty of 10 percent of the tax due unless the failure to remit was due to "reasonable cause and not due to neglect." In addition to the penalty, taxes due and unpaid because of an extension granted by the Board are subject to interest at the rate of 6 percent per year.

If taxes are unpaid within sixty days after they are due and no extension has been granted, the Board may issue a warrant to an agent of the Board or to any sheriff ordering him to levy upon and sell the real and personal property of the corporation within his county to pay the taxes, penalties, any interest due, and the cost of executing the warrant. Within five days after the receipt of such a warrant, the sheriff must file a copy with the clerk of the district court and the amount due becomes a lien on the real and chattel property of the corporation. An action may also be brought by the Attorney General upon the request of the Board to recover any amount due under the corporation license tax statutes.

The statutes also provide that any corporation which refuses or neglects to file a return at the time specified, or files a false or fraudulent return, is liable to a penalty of not more than $5,000 as adjudged by a court of competent jurisdiction. The court may also declare that the corporation has forfeited the right to continue to engage in business in Montana until the tax, together with any penalties and costs, is paid. The forfeiture may be enforced by the Attorney General.

The Board may also determine that taxes due are greater than shown on the corporation license tax return. If such a determination is made, the Board must mail written notice to the taxpayer of the additional tax assessed. The taxpayer may file a written protest with the Board within thirty days after the notice of increased assessment has been mailed. If no protest is filed, the tax is final upon expiration of the thirty-day period. An oral hearing must be given the taxpayer if a protest is filed; the Board takes final action following that hearing with written notification of its decision to the taxpayer. Notification from the Board constitutes demand for the payment of any deficiency due which is payable ten days from the date of the notice. A certificate by the Board of mailing of the notice is *prima facie* evidence of the computation and levy of the deficiency and notification of the taxpayer.

The Board may suspend a corporation if the tax is not paid before 5:00 P.M. of "the last day of the eleventh month after the date of delinquency." If the taxpayer is a domestic corporation, the corporate powers, rights, and privileges are suspended. If the taxpayer is a foreign corporation, the suspension works a forfeiture of the corporation's right to do *intrastate* business in Montana. Moreover, if a domestic corporation fails to file a return or pay the corporation license tax for a period of five years, the Board may notify the Secretary of State that the corporation is dissolved. Upon receipt of the notification, the Secretary of State must indicate the dissolution on his records.

The Board sometimes allows a short grace period for payment of taxes. This procedure is used to increase the possibility of compliance with the corporation license tax statutes and also reduces the number of cases where a taxpayer will claim good cause for late payment. An equity consideration is also involved in the grace period. A small taxpayer might pay only a nominal amount for late payment, but a large taxpayer could be subject to a substantial payment. If the tax has not been paid at the expiration of the grace period, a notice of assessment is mailed to the taxpayer. The notice lists the net income, taxes due, penalty at 10 percent, and interest at 6 percent.

If taxes are not paid soon after notification, the Board contacts the taxpayer by telephone. Although it has no specific statutory authority for the procedure, the Board does accept installment payment of taxes if expedient. Legal action may also be initiated. If the amount of taxes due is $500 or less, collection through the courts of another state is not feasible because of court costs. Collections through court action present no major problems, except that they are a time-consuming and somewhat costly procedure.

The Board may also issue a warrant for collection of taxes. Since 1963, the Board has issued twenty-seven warrants and collected fewer than ten of these warrants. In most cases, the warrant is issued to a Board field agent rather than a sheriff. A copy is mailed to the taxpayer, and one copy is filed with the county clerk of the court. If the taxpayer has a bank account, the Board may call upon the bank to make immediate payment.

The Board has never used the penalty provisions of Section 84-1506, R.C.M. 1947. In addition to the $5,000 fine, this section provides that a court may declare that the corporation has forfeited the right to continue in business. The section does not make any distinction between domestic and foreign corporations, and the effect of the section is not known because it has not been used.

Under Section 84-1508.1, R.C.M. 1947, the Board regularly collects additional deficiency assessments. Average collections under this section amount to about $100,000 each year. No detailed review of corporation license tax returns was done to determine whether any pattern exists in deficiency collections.

The Board also uses suspension as a means to enforce compliance with corporation license tax statutes. Since 1949, the Board has suspended 1,880 corporations of which 1,571 were domestic and 352 were foreign. Suspensions by the Board are shown in Table 4.

The effect of an order by the Board suspending a corporation and an order dissolving a corporation are approximately the same, except that the suspension is temporary. Section 1646 of 19 *American Jurisprudence* (2d) summarizes the effect of corporate dissolution as follows:

> It is generally held that in the absence of statutory provisions to the contrary, the dissolution of a corporation implies the termination of its existence and its utter extinction and obliteration as an entity or body in favor of which obligations might exist or accrue or upon which liabilities may be imposed . . .

It follows, therefore, that a corporation cannot enjoy the powers given it by the state if dissolved or suspended. Some of the most important of these powers are: (1) to sue and be sued in any court; (2) to purchase, hold, and convey real and personal property as required by the corporation; and (3) to enter into obligations and contracts essential to the transaction of the corporation's affairs or for the purposes of the corporation. A dissolved or suspended corporation cannot legally enter into a contract, enforce a contract or other obligation, or buy or sell property. Moreover, a prime benefit from the corporate structure is that a person can invest in the business without incurring any personal risk beyond the amount he has invested. If the directors or stockholders of a dissolved or suspended corporation persisted in operating the corporation for purposes other than closing its affairs, the persons could be personally liable for any business obligations incurred.

ADMINISTRATIVE COSTS

The costs to the Board of Equalization of administering the corporate license tax are very low; because the Board relies on Internal Revenue Service audits of the corporation federal tax returns to disclose errors by the taxpayer, they amount to 0.4 percent of the amount collected from the tax. Having only three full-time persons administering corporation license tax laws, Montana does not field audit corporation records. To partially compensate for the lack of field audits, the Board does verify information received with data reported to federal agencies and also exchanges information with other states if necessary. The average compliance cost reported by a sample of twenty-five corporations amounted to 10.2 percent of the amount of tax paid.

TABLE 4

CORPORATIONS SUSPENDED FOR FAILURE TO FILE
CORPORATION LICENSE TAX RETURNS OR PAY TAXES DUE

Date of Suspension	Number of Domestic Corp. Suspended	Number of Foreign Corp.	Suspended Totals
Oct. 25, 1949	–	–	157[a]
Jan. 31, 1951	177	103	280
Jan. 21, 1953	99	8	107
Nov. 14, 1953	1	–	1
Jan. 21, 1954	200	22	222
Mar. 9, 1955	132	27	159
Apr. 21, 1959	44	12	56
May 3, 1960	29	6	35
Aug. 21, 1961	1[b]	–	1
Aug. 28, 1961	121	19	140
June 6, 1962	70[c]	–	70
Sept. 4, 1962	113	42	155
Sept. 12, 1963	197[d]	44[d]	241
Feb. 19, 1964	1	–	1
July 13, 1964	88	31	119
Jan. 8, 1965	87	8	95
Oct. 5, 1965	136	9	145
Aug. 9, 1966	75	21	96
TOTALS	1,571	352	1,880[e]

SOURCE: State Board of Equalization.

a. Board files indicate that 157 corporations were suspended, but no listing was attached.
b. Great Falls Marketing Association. The Board notified the Secretary of State that the association had failed to file a return, pay taxes, or both for a period of five years.
c. On June 12, 1962, four corporations were deleted from the listing.
d. On September 16,1963, three domestic and one foreign corporation were deleted from the listing. On February 28, 1964, one domestic corporation was removed from the listing because the suspension was in error.
e. The total adds to 157 more than 2 columns because of no distribution of October 25, 1949 listing.

Chapter II

A STATISTICAL ANALYSIS OF CORPORATION TAXATION IN MONTANA

General Considerations

Shortly after the beginning of the 1967-69 biennium the Council began to gather statistical data on taxation of corporations. A complete enumeration of the returns was made. The information taken from the returns included total income, net income to Montana, taxable income, federal net income, the sales, payroll and property factors of apportioning firms, income directly allocated to Montana, the firm code number, the accounting procedure used by firms and the firms' industry group.

The data were gathered to answer some very specific questions about the corporation license tax in Montana. The main question concerns equity of the Montana corporation license tax. There are two levels to the question of equity. The first question concerns the "fairness" of treatment of multistate and domestic corporations. The second question concerns the differential tax treatment of corporations in various industries. In addition to answering these questions, these data were also gathered to answer the question of how tax liability changes when the tax base changes. Specifically, what is the effect of removing the sales factor from the three-factor apportionment formula used by multistate firms as proposed by the Willis Bill? Also, what is the effect of changing the corporation license tax to a tax on gross income rather than net income?

In addition to providing the basis for analysis of these specific questions, the data collected from the corporation tax returns provide considerable general knowledge of the corporation license tax and significance of corporations as business enterprises in various industry groups. This will become evident from data presented below.

This study can by no means be considered exhaustive. The information and data presented herein were tabulated to meet the minimal needs of the Council. Many more questions could be analyzed, but time does not permit this now.

NUMBER OF CORPORATIONS

The number of corporations studied is 7,291. Categorization of corporations was done so that a reasonable separation of domestic and multistate corporations could be made. The so-called apportioning firms were designated multistate corporations. The nonapportioning firms were for the most part considered domestic firms doing the bulk of their business in Montana. Table 5 shows two categories of apportioning firms - those using the regular three-factor formula and those using less than three factors for apportioning income to Montana.

TABLE 5

NUMBER OF CORPORATIONS NOT APPORTIONING INCOME, APPORTIONING INCOME, AND THOSE CORPORATIONS CATEGORIZED INACTIVE, DEAD, ETC.

	Total	Paying $10.00
Nonapportioning (domestic)	5,403	1,953
Apportioning (foreign)	624	156
Regular 3-factor formula	(151)	(50)
Less than 3-factor formula	(473)	(106)
Inactive, dead, etc.	1,264	
TOTALS	7,291	2,109

The nonapportioning firms comprised about 74 percent of the total corporations; the apportioning firms comprised about 9 percent of the total corporations; about 17 percent of the corporations were inactive, dead, bankrupt, delinquent, exempt, liquidated, or engaged in interstate commerce. About 29 percent of the corporations paid the minimum license fee of $10.

The corporations were also categorized by the type of accounting they used in filing their returns. Montana corporations can use one of three types of accounting: (1) the small business option; (2) apportionment or allocation formula; and (3) separate accounting. There were 1,215 corporations that used the small business option, 624 corporations used the allocation formula, and 4,188 corporations used separate accounting.

TAXABLE INCOME AND INCOME TAX BY INDUSTRY

Tables 6 and 7 show the taxable income and income tax payments in total and for each of the 21 business types.[25] Firms not using the apportionment formula (domestic firms) had a total positive taxable income of $85,631,338 and paid $6,014,710 in taxes. Note that the tax paid is not 5.25 percent of total taxable income. There were 1,953 firms having $190.47 or negative taxable income which was included in the taxable income totals for each industry. Thus, as is the case for business types metal mining, coal, and crude and natural gas, businesses have declared negative taxable incomes which result in a $10 tax. These negative taxable incomes reduce the total positive taxable income but do not reduce the tax liability by a proportional amount. Firms using the apportionment formula had a total of $27,184,576 taxable income and $1,817,406 of tax liability. The 3,450 domestic firms paying over the $10 minimum averaged $1,738 per firm in taxes. The 468 multistate firms paying over $10 averaged $3,880 per firm.

Removal of Sales Factor

One of the provisions of the proposed Willis Bill specifies alteration of the regular sales, property, and payroll allocation formula to eliminate the sales factor as a part of the formula. It is expected that if sales in Montana, as a percent of total sales of multistate firms, is high relative to the ratios of property in Montana, as a percent of total firm property, and payroll in Montana as a percent of total firm payroll, then elimination of the sales factor will result in a significant reduction in both income apportioned to Montana and the tax liability. This, of course, will be true for individual firms having the specified relationship between their sales, property, and payroll.

One would expect that if Montana is, in the aggregate, an "exporting" state, it would stand to gain tax revenue by converting to a payroll-property apportionment formula, since the sales factors of the exporting firms based within the state supposedly dilute the three-factor formulas. On the other hand, if Montana is, in the aggregate, an "importing" state, which is probably the case, it would lose tax revenue by converting to a payroll-property apportionment formula. In this case the sales factors of the importing firms based within the state reinforce the three-factor formulas.

Table 8 shows the change in taxable income and tax liability of multistate firms by industry group owing to elimination of the sales factor.[26] Elimination of the sales factor would reduce taxable income in thirteen out of the seventeen industry groups having taxable income before its elimination. Three out of the seventeen industry groups (agriculture, construction, and communications) would have a larger taxable income by eliminating the sales factor than they would if the formula were unchanged. Metal mining and transportation would experience the largest reductions in taxable income of the industries shown. The construction industry would experience the largest increase in taxable income. The total reduction in taxable income due to elimination of the sales factor is $3,424,350. However, not all of this reduction results in a loss of taxes. The other mining, communications, and metal mining industries had a negative taxable income before elimination of the sales factor, and it became more negative after elimination, which allowed the tax to remain at the minimum of $10. If the elimination of the sales factor caused a reduction in taxable income that more than offset the positive taxable income, then not all of the reduction in taxable income resulted in less tax liability. Any increase in negative taxable income leaves the tax liability unchanged at $10.

25. Table 6 appears on page 19, below. Table 7 appears on page 20, below.
26. Table 8 appears on page 21, below.

If the sales factor had been eliminated from the allocation formula in 1966, the decrease in total tax liability to Montana would have been $134,042. The construction industry would experience the largest increase in corporation tax liability if the sales factor were eliminated. The largest decreases in tax liability would be experienced by the transportation and metal mining industries. Thus, elimination of the sales factor results in significant shifts in the tax base among industries and between domestic and multistate firms.

TABLE 6

FIRMS NOT USING APPORTIONMENT FORMULA

Business Type	Total Firms	Number of Firms Paying $10.00	Taxable Income	Income Tax
1-Agriculture	785	307	$ 4,313,155	$ 471,629.50
2-Forestry	65	28	1,359,121	120,875.20
3-Metal Mining	32	21	-139,843	7,663.37
4-Coal	6	3	301,209	18,688.02
5-Crude & Natural Gas	171	108	-4,249,230	151,650.73
6-Other Mining	23	16	-249,470	4,872.61
7-Construction	318	120	4,507,234	392,557.85
8-Manufacturing	147	29	3,545,195	251,510.65
9-Transportation	104	38	1,190,434	84,531.16
10-Communications	86	31	14,695,265	785,215.05
11-Electricity, Gas, Water	16	9	27,450,795	1,519,373.78
12-Wholesale Trade	277	57	4,868,941	278,751.17
13-Retail Trade	1,260	417	10,449,696	719,126.58
14-Finance, Insurance, Real Estate	419	146	3,366,419	229,477.62
15-Banks	91[a]	11[a]	6,811,705[a]	365,746.14
16-Building and Loans	16	4	843,900	60,092.02
17-Credit Unions	23	4	59,901	3,164.88
18-Services	396	134	2,431,394	174,319.73
19-Nonallocable	473	210	1,590,729	174,558.98
20-Rentals	546	225	1,999,887	173,122.20
21-Cooperatives	149	35	484,901	27,782.28
TOTALS	5,403	1,953	$85,631,338	$6,014,709.52

a. State banks no longer subject to the corporation license tax.

TABLE 7

FIRMS USING APPORTIONMENT FORMULA

Business Type	Total Firms	Number of Firms Paying $10.00	Taxable Income	Income Tax
1-Agriculture	5	1	$ 163,577	$ 9,160
2-Forestry	5	1	39,787	4,201
3-Metal Mining	4	1	580,931	30,760
4-Coal	0	0	0	0
5-Crude & Natural Gas	39	22	2,284,339	162,141
6-Other Mining	2	1	-185,412	1,491
7-Construction	78	28	1,094,239	79,282
8-Manufacturing	165	16	11,177,347	596,709
9-Transportation	35	4	9,145,817	560,794
10-Communications	9	3	-3,258,406	4,636
11-Electricity, Gas, Water	1	0	660,387	34,670
12-Wholesale Trade	67	14	1,207,363	72,910
13-Retail Trade	63	21	2,756,975	170,467
14-Finance, Insurance, Real Estate	23	6	99,244	5,482
15-Banks	0	0	0	0
16-Building and Loans	0	0	0	0
17-Credit Unions	0	0	0	0
18-Services	60	19	227,354	19,489
19-Nonallocable	45	12	1,113,981	60,988
20-Rentals	20	6	72,454	3,978
21-Cooperatives	2	1	4,599	248
TOTALS	624	156	$27,184,576	$1,817,406

TABLE 8

THE CHANGE IN TAXABLE INCOME AND INCOME TAX LIABILITY DUE TO ELIMINATION OF THE SALES FACTOR FROM THE ALLOCATION FORMULA BY INDUSTRY GROUP

Business Type	Change in Taxable Income	Change in Tax Liability
1-Agriculture	$ +3,822	$ +13
2-Forestry	-23,402	-632
3-Metal Mining	-1,075,301	-30,231
4-Coal	–	–
5-Crude & Natural Gas	-70,398	+1,843
6-Other Mining	-37,328	+740
7-Construction	+126,374	+13,157
8-Manufacturing	-338,389	-23,459
9-Transportation	-1,671,564	-80,343
10-Communications	+85,232	-584
11-Electricity, Gas, Water	-10,835	-569
12-Wholesale Trade	-169,265	-3,253
13-Retail Trade	-43,186	-2,721
14-Finance, Insurance, Real Estate	-1,723	-128
15-Banks	–	–
16-Building and Loans	–	–
17-Credit Unions	–	–
18-Services	-97,753	-3,648
19-Nonallocable	-88,603	-3,798
20-Rentals	-14,034	-609
21-Cooperatives	-1,443	-76
TOTALS	$-3,424,350	$-134,042

The Role of Nonbusiness Income

Nonbusiness income of multistate corporations is defined by the Board of Equalization as "income other than that arising from transactions and activity in the regular course of the taxpayer's trade or business." The charge has been made that firms engaged in some particular principal business use their income losses for so-called sideline business to reduce their tax liability. The purpose here is to determine if this is true and the extent to which such practices affect tax revenue.

On Schedule K (Apportionment of Income) of the Montana corporation license tax return, line 9 represents nonbusiness income allocated directly to Montana. Income or loss reported in this section of Schedule K is presumably income or loss from sources other than that of the principal business.

Firms with nonbusiness income which changed their taxable income by at least $200 were selected from all multistate firms apportioning income. They were divided into two categories: (1) firms in which nonbusiness income reduced taxable income; and (2) firms in which nonbusiness income increased taxable income. These firms were further segregated to determine the impact of the nonbusiness income provision of the tax law on tax revenue.

According to the law, Montana taxable income is computed by adding nonbusiness income or losses to apportioned income. If for example, a nonbusiness loss is taken from a positive apportioned income, and the nonbusiness loss is larger than the apportioned income, a negative taxable income will result. However, because of the law, the tax liability is $10 for incomes of $190.47 and less, including negative incomes. Also, if a nonbusiness income is added to a negative apportioned income and the nonbusiness income is larger than the negative apportioned income, a positive taxable income will result. Thus, it is possible to have changes in taxable income all, part, or none of which result in a change in tax liability. The changes in taxable income shown in Table 9, however, all result in changes in tax liability.[27]

Thirty-eight multistate firms declared negative nonbusiness income of over $200 which reduced their liabilities in each case. Because of those declarations of negative nonbusiness income, taxable income of these firms was reduced by $4,350,792. The loss in tax liability resulting from that reduction in taxable income was $228,416 in 1966. It is interesting to note, however, that one firm in industry 9 (transportation) declared a nonbusiness loss of $2,819,362, which adds up to 64.8 percent of nonbusiness losses declared by all businesses declaring nonbusiness losses of $200 or more.

One hundred twenty multistate firms declared positive nonbusiness income of over $200, all of which increased tax liabilities. These one hundred twenty declarations of nonbusiness income resulted in an increase in taxable income of $2,177,993. The increase in tax liability of these firms because of an increase in taxable income was $114,344 in 1966.

Thus, there was a net loss in taxable income of $2,172,799 in 1966 because of the nonbusiness income feature of the corporation license tax law. The net loss in tax revenue was $114,072 in 1966.

A Tax on Gross Income vs. the Net Income Tax

During the last session of the Montana Legislature, considerable interest was expressed in a gross income or gross receipts tax on corporations. This study of the Montana corporation license tax may clarify some important issues raised by such a tax. In addition, the data generated to look at that broad question are also useful in looking at the equity of taxation between domestic and multistate firms.

The gross income of both the multistate and domestic corporations was determined. Domestic firms report their Montana gross income directly on line 14 of the Montana corporation license tax return. Multistate firms report their federal or total business gross income on line 14 and nonbusiness income directly allocated to Montana on line 9 of Schedule K. Montana gross income of domestic corporations was taken directly from line 14.

It was assumed that if tax liability were determined on the basis of gross income of multistate firms, allocation of their total business gross income to Montana would be done in the same way as allocation of net income is done now. Thus, Montana gross income of multistate firms was determined by multiplying the average apportionment percentage by total business gross income on line 14 of the return and adding that product to nonbusiness income directly allocated to Montana on line 9 of Schedule K of the return. Total Montana gross

27. Table 9 appears on page 23, below.

income of corporations determined by the above procedure for 1966 was $3,170,606,808 (see Table 10).[28] Domestic firms had over 87 percent of the total gross income, whereas multistate firms had about 13 percent of the total gross income. About 84 percent of the total gross income came from firms with over $1,000,000 gross income.

TABLE 9

THE INFLUENCE OF NONBUSINESS INCOME DIRECTLY ALLOCATED TO MONTANA ON THE TAX LIABILITY OF MULTISTATE CORPORATIONS BY BUSINESS TYPE

Business Type	Smaller Taxable Income	Number of Firms	Greater Taxable Income	Number of Firms
1-Agriculture	$ 2,589	1	$ 101,990	1
2-Forestry	–	0	–	0
3-Metal Mining	–	0	575,475	1
4-Coal	–	0	–	0
5-Crude & Natural Gas	330,866	6	97,845	5
6-Other Mining	–	0	–	0
7-Construction	218,913	2	215,477	14
8-Manufacturing	484,971	13	386,739	25
9-Transportation	3,035,952	5	503,008	9
10-Communications	–	0	2,766	1
11-Electricity, Gas, Water	–	0	–	0
12-Wholesale Trade	173,259	4	138,334	14
13-Retail Trade	400	1	9,597	8
14-Finance, Insurance, Real Estate	59,022	1	44,487	9
15-Banks	–	0	–	0
16-Building & Loans	–	0	–	0
17-Credit Unions	–	0	–	0
18-Services	35,091	1	32,709	16
19-Nonallocable	6,943	2	55,201	10
20-Rentals	2,786	2	11,288	6
21-Cooperatives	–	0	3,080	1
TOTALS	$4,350,792	38	$2,177,993	120

28. Table 10 appears on page 24, below.

TABLE 10

GROSS INCOME BY BUSINESS TYPE FOR MULTISTATE AND DOMESTIC CORPORATIONS DOING BUSINESS IN MONTANA 1966

Gross Income Bracket ($000)	Gross Income Multistate Firms	Gross Income Domestic Firms	Total
Under 10	$ 599,948	$ 3,842,723	$ 4,442,671
10-20	1,025,987	8,277,981	9,303,968
20-30	996,114	12,196,170	13,192,284
30-40	1,267,723	15,300,474	16,568,197
40-50	997,777	15,091,108	16,088,885
50-60	1,392,198	18,035,405	19,427,603
60-70	983,144	17,354,049	18,337,193
70-80	1,036,209	15,985,099	17,021,308
80-90	1,367,616	14,225,053	15,592,669
90-100	1,325,340	15,608,671	16,934,011
100-200	8,289,815	106,636,854	114,926,669
200-500	16,965,075	120,395,138	137,360,213
500-1,000	11,985,820	78,920,558	90,906,378
1,000-100,000	341,100,897	959,450,206	1,300,551,103
Over 100,000	--	1,379,953,656	1,379,953,656
TOTALS	$389,333,663	$2,781,273,145	$3,170,606,808

Multistate vs. Domestic Liability Relations - Net Income Tax and Gross Income Tax

During 1966, domestic firms paid 76.8 percent of the corporation license tax and multistate firms paid 23.2 percent of the tax. Substantial differences in the multistate and domestic tax liability exist among industries. For example, over 90 percent of the tax paid in twelve industry groups was borne by domestic firms (see Table 11).[29] On the other hand, no industry groups include multistate firms that pay over 90 percent of the tax liability.

If a flat rate gross income tax on all business types were levied, rather than the net income tax, domestic firms would pay over 90 percent of the tax in fourteen industry groups and multistate firms would pay over 70 percent of the tax liability in three industry groups. However, a flat rate gross tax as opposed to a net income tax would reduce the percent of the tax liability borne by multistate firms from 23.20 percent to 12.28 percent, or by 10.92 percent. Likewise, the tax liability borne by domestic firms with a flat rate gross income tax rather than a net income tax would increase by 10.92 percent from 76.80 percent to 87.72 percent. Thus, a change from the present net income tax to a flat rate gross income tax designed to raise the equivalent amount of tax revenue would favor the multistate firms at the expense of the domestic firms.

29. Table 11 appears on pages 25 and 26, below.

TABLE 11

A SUMMARY OF TAX PAID BY MULTISTATE AND DOMESTIC FIRMS FOR ALL BUSINESS TYPES UNDER PRESENT STATUTES

Business Type	Multistate Firms Tax Paid Currently (000)	Domestic Firms Tax Paid Currently (000)	Total Tax Paid All Firms (000)	Percent of Tax Paid by Multistate Firms	Percent of Tax Paid by Domestic Firms	Total
1-Agriculture	$ 9	$ 472	$ 481	1.87	98.13	100.00
2-Forestry	4	121	125	3.20	96.80	100.00
3-Metal Mining	31	8	39	79.49	20.51	100.00
4-Coal	–	19	19	0	100.00	100.00
5-Crude & Natural Gas	162	152	314	51.60	48.40	100.00
6-Other Mining	1	5	6	16.67	83.33	100.00
7-Construction	79	393	472	16.76	83.24	100.00
8-Manufacturing	597	252	849	70.27	29.73	100.00
9-Transportation	561	84	645	86.96	13.04	100.00
10-Communications	5	785	790	.70	99.30	100.00
11-Electricity, Gas, Water	35	1,519	1,554	2.25	97.75	100.00
12-Wholesale Trade	73	279	352	20.76	79.24	100.00
13-Retail Trade	170	719	889	19.18	80.82	100.00
14-Finance, Insurance, Real Estate	5	229	234	2.15	97.85	100.00
15-Banks	–	366	366	0	100.00	100.00
16-Building & Loans	–	60	60	0	100.00	100.00
17-Credit Unions	–	3	3	0	100.00	100.00
18-Services	19	174	193	9.85	90.15	100.00
19-Nonallocable	61	175	236	25.85	74.15	100.00
20-Rentals	4	173	177	2.27	97.73	100.00
21-Cooperatives	1	28	29	3.45	96.55	100.00
TOTALS	$1,817	$6,016	$7,833	23.20	76.80	100.00

TABLE 11 (Continued)

A SUMMARY OF TAX PAID BY MULTISTATE AND DOMESTIC FIRMS FOR ALL BUSINESS TYPES UNDER FLAT RATE GROSS INCOME TAX

Business Type	Multistate Firms Gross Income (000)	Domestic Firms Gross Income (000)	Total Gross Income All Firms (000)	Percent of Gross Income Multistate Firms	Percent of Gross Income Domestic Firms	Total
1-Agriculture	$ 502	$ 53,613	$ 54,115	.93	99.07	100.00
2-Forestry	600	18,022	18,622	3.22	96.78	100.00
3-Metal Mining	88,218	4,770	92,988	94.87	5.13	100.00
4-Coal	—	619	619	0	100.00	100.00
5-Crude & Natural Gas	51,790	1,052,467	1,104,257	4.69	95.31	100.00
6-Other Mining	2,492	949	3,441	72.42	27.58	100.00
7-Construction	10,582	76,334	86,916	12.17	87.83	100.00
8-Manufacturing	66,584	611,838	678,422	9.81	90.19	100.00
9-Transportation	47,928	50,363	98,291	48.76	51.24	100.00
10-Communications	54,638	53,466	108,104	50.54	49.46	100.00
11-Electricity, Gas, Water	3,425	77,589	81,014	4.23	95.77	100.00
12-Wholesale Trade	19,517	174,355	193,872	89.93	10.07	100.00
13-Retail Trade	30,288	320,520	350,858	8.63	91.37	100.00
14-Finance, Insurance, Real Estate	839	25,297	26,136	3.21	96.79	100.00
15-Banks	—	33,103	33,103	0	100.00	100.00
16-Building & Loans	—	11,628	11,628	0	100.00	100.00
17-Credit Unions	—	1,032	1,032	0	100.00	100.00
18-Services	2,741	41,316	44,057	6.22	93.78	100.00
19-Nonallocable	5,975	132,441	138,416	4.32	95.68	100.00
20-Rentals	510	18,650	19,160	2.67	97.33	100.00
21-Cooperatives	2,704	22,852	25,556	10.58	89.42	100.00
TOTALS	$389,333	$2,781,274	$3,170,609	12.28	87.72	100.00

Tables 12 and 13 show the projected change in the impact of taxes within each industry which would result from changing the existing net income tax to a flat rate gross tax that would yield an equivalent amount of revenue.[30]

Large increases in the proportion of tax liability of multistate firms would result in metal mining, other mining, communication, and wholesale trade at the expense of those multistate firms in the same industries.

Large decreases in the tax liability of multistate firms involved in the crude petroleum and natural gas, manufacturing, transportation, and nonallocable industries would result. Thus, a change to a flat rate gross income tax would favor multistate firms involved in crude petroleum and natural gas, manufacturing, and transportation industries at the expense of domestic firms in the same industries.

Although there are significant changes in the multistate as opposed to domestic firms within particular industries, the overall effect of changing to a flat rate gross income tax would be to favor the multistate corporations at the expense of the domestic corporations.

Interindustry Tax Liability Relations - Net Income Tax and Gross Income Tax

Table 14 shows that change from the present net income tax on corporations to a flat rate gross income tax might possibly cause a substantial shift in the percent of the corporation tax borne by various industries.[31] Column 5 of Table 14 represents the change in percent of tax burden that would be borne by multistate firms in each industry group if the present net income tax were changed to a flat rate gross income tax that would raise an equivalent amount of tax revenue. Among the multistate industry groups, six industries would experience an increase in their liability whereas fifteen industries would experience a decrease in tax burden. Multistate firms in metal mining and communication would share an increased tax liability of 20.95 percent and 13.76 percent, respectively; and firms in manufacturing and transportation would share a decreased tax liability of 15.75 percent and 18.56 percent, respectively.

If the flat rate gross income tax were levied with the yield being equivalent to that of the net income tax, and if the distribution of the tax liability were to be the same as with the net income tax, then a variable rate schedule could be used which would adjust the flat rate by the negative of the percentages shown in column 5 of Table 14. For example, if a .47 percent flat rate gross income tax rate were applied to $389,333,000 of gross income, it would yield $1,817,000 of tax – the same as that raised by the existing net income tax. The same procedure applied to the metal mining industry would result in an increase in the proportion of the tax liability borne by the metal mining industry of 20.95 percent. Thus, to maintain the same relative tax liability of the metal mining industry as with the net income tax, the flat gross tax rate of .47 percent would have to be adjusted downward by 20.95 percent.

Column 5 of Table 14 (continued) is the change in percent of tax liability that would be borne by domestic firms in each industry group if the present net income tax were changed to a flat rate gross income tax that would raise the same amount of revenue. Seven industry groups would experience an increase in their liability and fourteen groups would experience a decrease in their tax liability. Domestic firms in crude petroleum and natural gas and manufacturing would share an increased tax liability of 35.31 percent and 17.81 percent, respectively; and firms in communications and electricity, gas and utilities would share a decreased tax liability of 11.13 percent and 22.46 percent, respectively.

Domestic and Multistate Firms - The Effect of a Change to a Gross Tax

The gross income tax flat rate on domestic firms required to raise an equivalent amount of revenue as the present net income tax is .22 percent. This, in other terms, means that the existing corporation license tax on domestic firms raises about 2.2 mills per dollar of Montana gross income. On the other hand, the existing corporation license tax on multistate firms raises about 4.7 mills per dollar of Montana gross income, or 2.14 times as much as that on domestic firms.

If Montana gross income is used as a comparable measure of tax-paying ability (which would be implied by acceptance of a gross tax concept), the data show that multistate corporations share over twice the relative liability as that shared by domestic corporations.

30. Table 12 appears on page 28, below. Table 13 appears on page 29, below.

31. Table 14 appears on pages 30 and 31 below.

TABLE 12

THE CHANGE IN TAX BURDEN ON MULTISTATE FIRMS IF THE CORPORATION TAX WERE CHANGED TO A GROSS TAX FLAT RATE ON ALL BUSINESS TYPES

Business Type	Percent of Tax Paid By Multistate Firms-Net Income Tax	Percent of Tax Paid by Multistate Firms-Gross Tax-Flat Rate	Tax Burden Change on Multistate Firms By Using Gross Tax
1-Agriculture	1.87	.93	-.94
2-Forestry	3.20	3.22	+.02
3-Metal Mining	79.49	94.87	+15.38
4-Coal	0	0	0
5-Crude & Natural Gas	51.60	4.69	-46.91
6-Other Mining	16.67	72.42	+55.75
7-Construction	16.76	12.17	-4.59
8-Manufacturing	70.27	9.81	-60.46
9-Transportation	86.96	48.76	-38.20
10-Communications	.70	50.54	+49.84
11-Electricity, Gas, Water	2.25	4.23	+1.98
12-Wholesale Trade	20.76	89.93	+69.17
13-Retail Trade	19.18	8.63	-10.55
14-Finance, Insurance, Real Estate	2.15	3.21	+1.06
15-Banks	0	0	0
16-Building & Loans	0	0	0
17-Credit Unions	0	0	0
18-Services	9.85	6.22	-3.63
19-Nonallocable	25.85	4.32	-21.53
20-Rentals	2.27	2.67	+.40
21-Cooperatives	3.45	10.58	+7.13
TOTALS	23.20	12.28	-10.92

TABLE 13

THE CHANGE IN TAX BURDEN ON DOMESTIC FIRMS IF THE CORPORATION TAX WERE CHANGED TO A GROSS TAX FLAT RATE ON ALL BUSINESS TYPES

Business Type	Percent of Tax Paid By Domestic Firms-Net Income Tax	Percent of Tax Paid by Domestic Firms-Gross Tax-Flat Rate	Tax Burden Change on Domestic Firms By Using Gross Tax
1-Agriculture	98.13	99.07	+.94
2-Forestry	96.80	96.78	-.02
3-Metal Mining	20.51	5.13	-15.38
4-Coal	100.00	100.00	0
5-Crude & Natural Gas	48.40	95.31	+46.91
6-Other Mining	83.33	27.58	-55.75
7-Construction	83.24	87.83	+4.59
8-Manufacturing	29.73	90.19	+60.46
9-Transportation	13.04	51.24	+38.20
10-Communications	99.30	49.46	-49.84
11-Electricity, Gas, Water	97.75	95.77	-1.98
12-Wholesale Trade	79.24	10.07	-69.17
13-Retail Trade	80.82	91.37	+10.55
14-Finance, Insurance, Real Estate	97.85	96.79	-1.06
15-Banks	100.00	100.00	0
16-Building & Loans	100.00	100.00	0
17-Credit Unions	100.00	100.00	0
18-Services	90.15	93.78	+3.63
19-Nonallocable	74.15	95.68	+21.58
20-Rentals	97.73	97.33	-.40
21-Cooperatives	96.55	89.42	-7.13
TOTALS	76.80	87.72	+10.92

TABLE 14

CHANGE IN TAX BURDEN BY BUSINESS TYPE FOR MULTISTATE AND DOMESTIC FIRMS DUE TO A GROSS FLAT RATE TAX RATHER THAN A NET INCOME TAX

MULTISTATE FIRMS

Business Type	Tax Paid Currently (000)	Gross Income (000)	Percent of Total Tax Paid	Percent of Total Gross Income	Change in Tax Burden
1-Agriculture	$ 9	$ 502	.50	.13	-.37
2-Forestry	4	600	.22	.15	-.07
3-Metal Mining	31	88,218	1.71	22.66	+20.95
4-Coal	–	–	–	–	–
5-Crude & Natural Gas	162	51,790	8.91	13.30	+4.39
6-Other Mining	1	2,492	.05	.64	+.59
7-Construction	79	10,582	4.35	2.72	-1.63
8-Manufacturing	597	66,584	32.85	17.10	-15.75
9-Transportation	561	47,928	30.87	12.31	-18.56
10-Communications	5	54,638	.27	14.03	+13.76
11-Electricity, Gas, Water	35	3,425	1.93	.88	-1.05
12-Wholesale Trade	73	19,517	4.02	5.01	+.99
13-Retail Trade	170	30,288	9.35	7.78	-1.57
14-Finance, Insurance, Real Estate	5	839	.28	.22	-.06
15-Banks	–	–	–	–	–
16-Building & Loans	–	–	–	–	–
17-Credit Unions	–	–	–	–	–
18-Services	19	2,741	1.05	.70	-.35
19-Nonallocable	61	5,975	3.36	1.54	-1.82
20-Rentals	4	510	.22	.13	-.09
21-Cooperatives	1	2,704	.06	.70	+.64
TOTALS	$1,817	$389,333	100.00	100.00	0.00

Tax Liability as Percent of Gross Income: .47%

TABLE 14 (Continued)

CHANGE IN TAX BURDEN BY BUSINESS TYPE FOR MULTISTATE AND DOMESTIC FIRMS DUE TO A GROSS FLAT RATE TAX RATHER THAN A NET INCOME TAX

DOMESTIC FIRMS

Business Type	Tax Paid Currently (000)	Gross Income (000)	Percent of Total Tax Paid	Percent of Total Gross Income	Change in Tax Burden
1-Agriculture	$ 472	$ 53,613	7.85	1.93	-5.92
2-Forestry	121	18,022	2.01	.65	-1.36
3-Metal Mining	8	4,770	.13	.17	+.04
4-Coal	19	619	.32	.02	-.30
5-Crude & Natural Gas	152	1,052,467	2.53	37.84	+35.31
6-Other Mining	5	949	.08	.03	-.05
7-Construction	393	76,334	6.53	2.74	-3.79
8-Manufacturing	252	611,838	4.19	22.00	+17.81
9-Transportation	84	50,363	1.40	1.81	+.41
10-Communications	785	53,466	13.05	1.92	-11.13
11-Electricity, Gas, Water	1,519	77,589	25.25	2.79	-22.46
12-Wholesale Trade	279	174,355	4.64	6.27	+1.63
13-Retail Trade	719	320,570	11.95	11.53	-.42
14-Finance, Insurance, Real Estate	229	25,297	3.81	.91	-2.90
15-Banks	366	33,103	6.08	1.19	-4.89
16-Building & Loans	60	11,628	1.00	.42	-.58
17-Credit Unions	3	1,032	.05	.04	-.01
18-Services	174	41,316	2.89	1.49	-1.40
19-Nonallocable	175	132,441	2.91	4.76	+1.85
20-Rentals	173	81,650	2.87	.67	-2.20
21-Cooperatives	28	22,852	.46	.82	+.36
TOTALS	$6,016	$2,781,274	100.00	100.00	0.00

Tax Liability as Percent of Gross Income: .22%

Corporations Paying Over $20,000 in Taxes

It has been known for some time that a few corporations pay a large share of the corporation license tax. In order to clarify the situation this section examines data on corporations paying over $20,000 in tax liability. Several of the tables used for analysis in the preceding sections were reconstructed leaving out these large corporations to determine their impact on the overall analysis of all firms.

In 1966, forty-nine corporations paid over $20,000 in corporation license taxes. Twenty-five multistate firms and twenty-four domestic firms paid a total of $4,063,000 in taxes. These firms paid 51.87 percent of total taxes paid by all corporations to the state. The twenty-five multistate firms paying over $20,000 paid 63.13 percent of the taxes paid by all multistate firms; and the twenty-four domestic firms paying over $20,000 paid 48.47 percent of the taxes paid by all domestic firms.

Although these forty-nine firms account for 51.87 percent of the corporation license tax, their gross income is only 10.51 percent of the total gross income of all multistate corporations. The gross income of domestic corporations paying over $20,000 accounts for only 7.95 percent of the gross income of all domestic corporations.

Eighteen of the twenty-five multistate firms paying over $20,000 in taxes in 1966 were in the manufacturing and transportation industries. Domestic firms encompass ten out of twenty-one industry groups, with no more than four firms in any industry group (see Table 15).[32]

The tax liability of multistate firms paying over $20,000 is 1.02 percent of their gross income and the tax liability of domestic firms in the same bracket is 1.32 percent of their gross income. Recall that these percentages were .47 percent and .22 percent respectively for all multistate and domestic firms. Thus, both multistate and domestic firms that paid over $20,000 in taxes paid higher percentages of their gross income in taxes than smaller firms.

Column 5 of Table 16 represents the projected change in the percent of taxes paid by multistate firms in various industries if the existing tax were changed from a net income tax to a flat rate gross income tax, excluding those corporations paying over $20,000.[33] A change to a flat rate gross income tax would result in increasing the share of the tax liability of the multistate metal mining and transportation firms by 27.19 percent and 18.95 percent. There would be a reduction in multistate manufacturing firms' share of the tax liability of 28.46 percent.

Domestic firms in agriculture and wholesale trade would share 13.13 percent and 10.83 percent less tax liability by instituting a flat rate gross income tax. Domestic firms in the crude petroleum and natural gas and manufacturing industries would share 37.85 percent and 19.32 percent more of the tax liability. Domestic firms in all other nineteen industry groups would share less of the tax liability. At this point, it would be a good idea to recall the same data in Table 14, which include those twenty-four domestic firms paying over $20,000 tax. The data show seven industry groups that would share more of the tax liability by instituting a flat rate gross income tax.

It can now be seen that elimination of the sales factor in apportioning income of the twenty-five multistate corporations paying over $20,000 tax reduces the tax liability by $48,894 and the taxable income of those corporations by $930,851 (see Table 17).[34] The reduction in tax liability of these twenty-five multistate corporations accounts for 36.48 percent of the reduction in tax liability of all apportioning firms due to elimination of the sales factor.

32. Table 15 appears on page 33, below.

33. Table 16 appears on pages 34 and 35, below.

34. Table 17 appears on page 36, below.

TABLE 15

IMPORTANCE OF FIRMS PAYING OVER $20,000 TAX

Business Type	25 MULTISTATE FIRMS Number of Firms	Tax Paid Currently	Gross Income	24 DOMESTIC FIRMS Number of Firms	Tax Paid Currently	Gross Income
1-Agriculture	0	$	$	0	$	$
2-Forestry	0			1	55,514	2,072,736
3-Metal Mining	0			0		
4-Coal	0			0		
5-Crude & Natural Gas	1	84,306	20,870,178	2	57,173	5,087.204
6-Other Mining	0			0		
7-Construction	1	38,710	2,089,233	3	202,598	9,997,372
8-Manufacturing	11	322,724	31,918,646	4	120,698	8,907,856
9-Transportation	7	495,841	32,028,327	0		
10-Communications	0			2	713,748	36,355,111
11-Electricity, Gas, Water	1	34,670	3,424,713	3	1,514,264	76,014,526
12-Wholesale Trade	0			1	21,324	932,122
13-Retail Trade	3	127,624	17,712,601	3	81,278	71,084,991
14-Finance, Insurance, Real Estate	0			1	25,015	688,800
15-Banks	0			4	124,388	9,874,032
16-Building & Loans	0			0		
17-Credit Unions	0			0		
18-Services	0			0		
19-Nonallocable	1	42,957	4,032,304	0		
20-Rentals	0			0		
21-Cooperatives	0			0		
TOTALS	25	$1,146,832	$112,076,002	24	$2,916,000	$221,014,758
Tax as Percent of Gross Income			1.02%			1.32%

TABLE 16

CHANGE IN TAX BURDEN BY BUSINESS TYPE FOR MULTISTATE AND DOMESTIC FIRMS DUE TO A GROSS FLAT RATE TAX RATHER THAN A NET INCOME TAX--DATA EXCLUDES FIRMS PAYING OVER $20,000 CORPORATION LICENSE TAX

MULTISTATE FIRMS

Business Type	Tax Paid Currently	Gross Income	Percent of Total Tax Paid	Percent of Total Gross Income	Change in Tax Burden
	(000)	(000)			
1-Agriculture	$ 9	$ 502	1.34	.18	-1.16
2-Forestry	4	600	.60	.22	-.38
3-Metal Mining	31	88,218	4.63	31.82	+27.19
4-Coal	–	–	–	–	–
5-Crude & Natural Gas	78	30,920	11.66	11.15	-.51
6-Other Mining	1	2,492	.15	.90	+.75
7-Construction	40	8,493	5.98	3.06	-2.92
8-Manufacturing	274	34,665	40.96	12.50	-28.46
9-Transportation	65	15,900	9.71	5.74	-3.97
10-Communications	5	54,638	.75	19.70	+18.95
11-Electricity, Gas, Water	–	–	–	–	–
12-Wholesale Trade	73	19,517	10.91	7.04	-3.87
13-Retail Trade	42	12,575	6.28	4.54	-1.74
14-Finance, Insurance, Real Estate	5	839	.75	.30	-.45
15-Banks	–	–	–	–	–
16-Building & Loans	–	–	–	–	–
17-Credit Unions	–	–	–	–	–
18-Services	19	2,741	2.84	.99	-1.85
19-Nonallocable	18	1,943	2.69	.70	-1.99
20-Rentals	4	510	.60	.18	-.42
21-Cooperatives	1	2,704	.15	.98	+.83
TOTALS	$669	$277,257	100.00	100.00	0.00

Tax Liability as Percent of Gross Income: .24%

TABLE 16 (Continued)

CHANGE IN TAX BURDEN BY BUSINESS TYPE FOR MULTISTATE AND DOMESTIC FIRMS DUE TO A GROSS FLAT RATE TAX RATHER THAN A NET INCOME TAX--DATA EXCLUDES FIRMS PAYING OVER $20,000 CORPORATION LICENSE TAX

DOMESTIC FIRMS

Business Type	Tax Paid Currently	Gross Income	Percent of Total Tax Paid	Percent of Total Gross Income	Change in Tax Burden
	(000)	(000)			
1-Agriculture	$ 472	$ 53,613	15.23	2.10	-13.13
2-Forestry	65	15,949	2.10	.62	-1.48
3-Metal Mining	8	4,770	.26	.19	-.07
4-Coal	19	619	.61	.03	-.58
5-Crude & Natural Gas	95	1,047,380	3.06	40.91	+37.85
6-Other Mining	5	949	.16	.02	-.14
7-Construction	190	66,337	6.13	2.59	-3.54
8-Manufacturing	131	602,930	4.23	23.55	+19.32
9-Transportation	84	50,363	2.71	1.97	-.74
10-Communications	71	17,111	2.29	.67	-1.62
11-Electricity, Gas, Water	5	1,574	.16	.06	-.10
12-Wholesale Trade	258	173,423	8.32	6.77	-1.55
13-Retail Trade	638	249,485	20.58	9.75	-10.83
14-Finance, Insurance, Real Estate	204	24,608	6.58	.96	-5.62
15-Banks	242	23,229	7.80	.91	-6.89
16-Building & Loans	60	11,628	1.94	.46	-1.48
17-Credit Unions	3	1,032	.10	.04	-.06
18-Services	174	41,316	5.61	1.61	-4.00
19-Nonallocable	175	132,441	5.65	5.17	-.48
20-Rentals	173	18,650	5.58	.73	-4.85
21-Cooperatives	28	22,852	.90	.89	-.01
TOTALS	$3,100	$2,560,259	100.00	100.00	0.00

Tax Liability as Percent of Gross Income: .12%

TABLE 17

THE CHANGE IN TAXABLE INCOME AND INCOME TAX LIABILITY DUE TO ELIMINATION OF THE SALES FACTOR FROM THE ASSOCIATION FORMULA BY INDUSTRY GROUPS FOR FIRMS PAYING OVER $20,000 CORPORATION LICENSE TAX

Business Type	Change in Taxable Income	Change in Tax Liability	Number of Firms
1-Agriculture	$ –	$ –	0
2-Forestry	–	–	0
3-Metal Mining	–	–	0
4-Coal	–	–	0
5-Crude & Natural Gas	+43,867	+2,303	1
6-Other Mining	–	–	0
7-Construction	+355,284	+18,652	1
8-Manufacturing	-177,532	-9,345	11
9-Transportation	-1,116,712	-58,627	7
10-Communications	–	–	0
11-Electricity, Gas, Water	-10,835	-569	1
12-Wholesale Trade	–	–	0
13-Retail Trade	-2,159	-113	3
14-Finance, Insurance, Real Estate	–	–	0
15-Banks	–	–	0
16-Building & Loans	–	–	0
17-Credit Unions	–	–	0
18-Services	–	–	0
19-Nonallocable	-22,764	-1,195	1
20-Rentals	–	–	0
21-Cooperatives	–	–	0
TOTALS	$-930,851	$-48,894	25

Chapter III
CONCLUSIONS AND RECOMMENDATIONS

Throughout this study, legislation has been pending in Congress which would have a vital effect upon the authority of the states to tax multistate businesses. The Council concludes that the proposed federal legislation (the Willis Bill, H. R. 2158) would reduce state corporation income tax revenue by about $134,000 per year because of elimination of the sales factor for apportionment purposes. This change would also result in significant shifts in the tax base among industries and between domestic and multistate firms. Moreover, the federal legislation would substantially impair state financial autonomy by making the state dependent upon the federal government in major areas of taxation. A more feasible, and much more desirable, means of solving any problems in the taxation of multistate businesses is joint action by the states effected through a compact *under state control and direction.* At the request of the Council, the Governor made formal application for associate membership in the Multistate Tax Compact, and membership was granted on January 23, 1968. The Council recommends that Montana membership be made permanent by adoption of the Multistate Tax Compact by statute. The State Board of Equalization concurs in this recommendation. A bill to implement the recommendation appears in Appendix A of this report.

Because of the interest in a gross income tax, the Council computed the effect of such a tax. Based upon this analysis, the Council concludes that such a tax would shift 10.92 percent of the present income tax liability from multistate to domestic firms, if the tax were designed to raise the same amount of revenue. This would not be desirable. Moreover, without careful structuring a gross income tax would make marked shifts within the twenty-one business categories examined. The Council declines to comment on whether some adjustments might be equitable, but concludes that drastic adjustments should not be made without careful consideration of the consequences. Even if adjustments are desirable, gradual steps toward a desired goal are usually more equitable than a sudden change. These conclusions apply only to aggregate data, and they should not be considered as an endorsement of the present tax structure as it applies to individual firms nor to business categories.

The Council conducted a detailed statistical analysis to determine whether multistate firms were paying an equitable share of the corporation license tax. A rigid division between domestic and multistate firms is not possible because of the nature of data reported on tax returns. The division, therefore, was made between corporations which apportion income and those which do not apportion income for tax purposes. Some multistate corporations that use separate accounting are included in the category of firms which do not apportion income, but these firms are not essentially different from domestic firms. Utilizing the methodology outlined in this report, the Council concludes that multistate corporations share over twice the relative liability as that shared by domestic corporations. Again, this conclusion applies only in the aggregate; it does not apply to individual firms nor business categories.

The conclusions contained in this report are the result of examining data now available from tax returns filed with the State Board of Equalization. It was not possible to field audit particular returns nor to examine the methods used to apportion income in detail. Yet, the methods used to apportion income may be the very crux of the problem. With a limited staff and budget for administration of the corporation license tax statutes, the Board of Equalization has not exerted substantial efforts to examine apportionment methods used. The Council concludes that an increased expenditure for administration of the corporation license tax statutes should be made. At present, administrative costs amount to about 0.4 percent of tax collections. An additional administrative cost, perhaps 1 percent of tax collections, would be justifiable. The Board should give first priority to an examination of apportionment factors if staff are added. With a modest increase in funds available, the Board could review the apportionment factors and contract with accounting firms to obtain detailed data if there were questions about the returns. Or, the Board could arrange for audits through the Multistate Tax Compact if this capability is developed.

The Council further concludes that a redefinition of the corporation taxing statutes to provide both a license and a direct income tax would broaden the application of the tax. As noted above, some corporations which are subject to a direct income tax are not subject to a license tax. The Council recommends that the present license tax be retained and that the state also enact a direct income tax statute providing that no corporation would be subject to both taxes. The State Board of Equalization concurs in this recommendation. A bill to implement the recommendation appears in Appendix B of this report.

After consulting with the State Board of Equalization, the Council concludes that firms should be required to file a copy of their federal income tax return with the State Board of Equalization upon request. Corporations should also be required to report changes in federal income tax liability to the Board, and copies of amended federal income tax returns should be filed with the Board. The present period of five years for the State Board of Equalization to give notice of a deficiency should also be extended if a corporation fails to report a change in federal income tax liability or files an amended federal income tax return. The State Board of Equalization concurs in these recommendations. A bill to implement the changes appears in Appendix C of this report. It is estimated that this change will increase state tax revenues by at least $50,000 annually.

To indicate more clearly that corporations may not arbitrarily change their method of allocating or apportioning income to gain a tax advantage, the Council also recommends an amendment to Section 84-1503, R.C.M. 1947. In addition to clarification, the requirement that the State Board of Equalization publish rules on this subject each year should be modified. Discretion to publish rules as necessary should be vested in the Board. The State Board of Equalization concurs in this recommendation. A bill to implement this change appears in Appendix D.

The Council further concludes that only affiliated corporations whose operations constitute a single unitary business should be allowed to file a consolidated tax return. The State Board of Equalization concurs in this recommendation. A bill to implement the recommendation, and specify the amount of stock which must be owned for filing a consolidated return, appears in Appendix E.

The Council also concludes that the state should adopt the federal income tax definition of "taxable income" and reporting periods should be the same as required by the federal government. This change will simplify administration of the statutes and should also reduce taxpayer compliance costs. The State Board of Equalization concurs in these recommendations. A bill to implement the recommendations appears in Appendix F of this report.

The Council further concludes that other states, and their political subdivisions, should have the right to sue in Montana courts for collection of taxes if this same right is accorded to the state of Montana. The State Board of Equalization concurs in this recommendation. A bill to implement the recommendation appears in Appendix G of this report.

To provide for better administration of tax statutes, the Council also concludes that the State Board of Equalization should have the authority to demand immediate payment of any taxes due if collection of those taxes might be jeopardized in whole or in part by delaying collection. The State Board of Equalization concurs in this recommendation. A bill to implement the recommendation appears in Appendix H of this report.

Finally, the Council recommends that the Legislative Assembly make provision for a continuing study of both the individual and corporation income tax statutes and procedures. The statistical data compiled for this report pertain only to taxable year 1966. Yet, tax liabilities can fluctuate considerably from year to year. Data pertaining to a period of time (five to ten years) would, of course, be more valid than data from one year only. In addition to allowing a more sophisticated analysis of the taxes, data covering a longer period of time might reveal trends of major importance to the state.

APPENDICES

APPENDIX A

_____ BILL NO. _____

INTRODUCED BY

A BILL FOR AN ACT ENTITLED: "AN ACT TO ADOPT AND IMPLEMENT THE MULTISTATE TAX COMPACT DEALING WITH TAXES PAID BY BUSINESS FIRMS."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. The "Multistate Tax Compact" is hereby enacted into law and entered into with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I. Purposes

The purposes of this compact are to:

1. Facilitate proper determination of state and local tax liability of multistate taxpayers, including the equitable apportionment of tax bases and settlement of apportionment disputes.
2. Promote uniformity or compatibility in significant components of tax systems.
3. Facilitate taxpayer convenience and compliance in the filing of tax returns and in other phases of tax administration.
4. Avoid duplicative taxation.

ARTICLE II. Definitions.

As used in this compact:

1. "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any Territory or Possession of the United States.
2. "Subdivision" means any governmental unit or special district of a state.
3. "Taxpayer" means any corporation, partnership, firm, association, governmental unit or agency or person acting as a business entity in more than one State.
4. "Income tax" means a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, one or more forms of which expenses are not specifically and directly related to particular transactions.
5. "Capital stock tax" means a tax measured in any way by the capital of a corporation considered in its entirety.
6. "Gross receipts tax" means a tax, other than a sales tax, which is imposed on or measured by the gross volume of business, in terms of gross receipts or in other terms, and in the determination of which no deduction is allowed which would constitute the tax an income tax.
7. "Sales tax" means a tax imposed with respect to the transfer for a consideration of ownership, possession or custody of tangible personal property or the rendering of services measured by the price of the tangible personal property transferred or services rendered and which is required by State or local law to be separately stated from the sales price by the seller, or which is customarily separately stated from the sales price, but does not include a tax imposed exclusively on the sale of a specifically identified commodity or article or class of commodities or articles.
8. "Use tax" means a nonrecurring tax, other than a sales tax, which (a) is imposed on or with respect to the exercise or enjoyment of any right or power over tangible personal property incident to the ownership, possession or custody of that property or the leasing of that property from another including any consumption, keeping, retention, or other use of tangible personal property and (b) is complementary to a sales tax.

9. "Tax" means an income tax, capital stock tax, gross receipts tax, sales tax, use tax, and any other tax which has a multistate impact, except that the provisions of Articles III, IV and V of this compact shall apply only to the taxes specifically designated therein and the provisions of Article IX of this compact shall apply only in respect to determinations pursuant to Article IV.

ARTICLE III. Elements of Income Tax Laws. Taxpayer Option, State and Local Taxes.

1. Any taxpayer subject to an income tax whose income is subject to apportionment and allocation for tax purposes pursuant to the laws of a party state or pursuant to the laws of subdivisions in two or more party states may elect to apportion and allocate his income in the manner provided by the laws of such state or by the laws of such states and subdivisions without reference to this compact, or may elect to apportion and allocate in accordance with Article IV. This election for any tax year may be made in all party states or subdivisions thereof or in any one or more of the party states or subdivisions thereof without reference to the election made in the others. For the purposes of this paragraph, taxes imposed by subdivisions shall be considered separately from state taxes and the apportionment and allocation also may be applied to the entire tax base. In no instance wherein Article IV is employed for all subdivisions of a state may the sum of all apportionments and allocations to subdivisions within a state be greater than the apportionment and allocation that would be assignable to that state if the apportionment or allocation were being made with respect to a state income tax.

Taxpayer Option, Short Form.

2. Each party state or any subdivision thereof which imposes an income tax shall provide by law that any taxpayer required to file a return, whose only activities within the taxing jurisdiction consist of sales and do not include owning or renting real estate or tangible personal property, and whose dollar volume of gross sales made during the tax year within the state or subdivision, as the case may be, is not in excess of $100,000 may elect to report and pay any tax due on the basis of a percentage of such volume, and shall adopt rates which shall produce a tax which reasonably approximates the tax otherwise due. The Multistate Tax Commission, not more than once in five years, may adjust the $100,000 figure in order to reflect such changes as may occur in the real value of the dollar, and such adjusted figure, upon adoption by the Commission, shall replace the $100,000 figure specifically provided herein. Each party state and subdivision thereof may make the same election available to taxpayers additional to those specified in this paragraph.

Coverage.

3. Nothing in this Article relates to the reporting or payment of any tax other than an income tax.

ARTICLE IV. Division of Income.

1. As used in this Article, unless the context otherwise requires:
   (a) "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitute integral parts of the taxpayer's regular trade or business operations.
   (b) "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.
   (c) "Compensation" means wages, salaries, commissions and any other form of remuneration paid to employees for personal services.
   (d) "Financial organization" means any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any type of insurance company.
   (e) "Nonbusiness income" means all income other than business income.

(f) "Public utility" means any business entity (1) which owns or operates any plant, equipment, property, franchise, or license for the transmission of communications, transportation of goods or persons, except by pipe line, or the production, transmission, sale, delivery, or furnishing of electricity, water or steam; and (2) whose rates of charges for goods or services have been established or approved by a Federal, State or local government or governmental agency.

(g) "Sales" means all gross receipts of the taxpayer not allocated under paragraphs of this Article.

(h) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any Territory or Possession of the United States, and any foreign country or political subdivision thereof.

(i) "This State" means the state in which the relevant tax return is filed or, in the case of application of this Article to the apportionment and allocation of income for local tax purposes, the subdivision or local taxing district in which the relevant tax return is filed.

2. Any taxpayer having income from business activity which is taxable both within and without this state, other than activity as a financial organization or public utility or the rendering of purely personal services by an individual, shall allocate and apportion his net income as provided in this Article. If a taxpayer has income from business activity as a public utility but derives the greater percentage of his income from activities subject to this Article, the taxpayer may elect to allocate and apportion his entire net income as provided in this Article.

3. For purposes of allocation and apportionment of income under this Article, a taxpayer is taxable in another state if (1) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

4. Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in paragraphs 5 through 8 of this Article.

5. (a) Net rents and royalties from real property located in this state are allocable to this state.

(b) Net rents and royalties from tangible personal property are allocable to this state: (1) if and to the extent that the property is utilized in this state, or (2) in their entirety if the taxpayer's commercial domicile is in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

6. (a) Capital gains and losses from sales of real property located in this state are allocable to this state.

(b) Capital gains and losses from sales of tangible personal property are allocable to this state if (1) the property had a situs in this state at the time of the sale, or (2) the taxpayer's commercial domicile is in this state and the taxpayer is not taxable in the state in which the property had a situs.

(c) Capital gains and losses from sales of intangible personal property are allocable to this State if the taxpayer's commercial domicile is in this State.

7. Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

8. (a) Patent and copyright royalties are allocable to this state: (1) if and to the extent that the patent or copyright is utilized by the payer in this state, or (2) if and to the extent that the patent or copyright

is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer's commercial domicile is in this state.

(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

9. All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

10. The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

11. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

12. The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the tax administrator may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

13. The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation and the denominator of which is the total compensation paid everywhere during the tax period.

14. Compensation is paid in this state if:

(a) the individual's service is performed entirely within the state;

(b) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

(c) some of the service is performed in the state and (1) the base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or (2) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

15. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

16. Sales of tangible personal property are in this state if:

(a) the property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or

(b) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (1) the purchaser is the United States Government or (2) the taxpayer is not taxable in the state of the purchaser.

17. Sales, other than sales of tangible personal property, are in this state if:

(a) the income-producing activity is performed in this state; or

(b) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

18. If the allocation and apportionment provisions of this Article do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the tax administrator may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

(a) separate accounting;
(b) the exclusion of any one or more of the factors;
(c) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or
(d) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

ARTICLE V. Elements of Sales and Use Tax Laws.

Tax Credit.

1. Each purchaser liable for a use tax on tangible personal property shall be entitled to full credit for the combined amount or amounts of legally imposed sales or use taxes paid by him with respect to the same property to another state and any subdivision thereof. The credit shall be applied first against the amount of any use tax due the state, and any unused portion of the credit shall then be applied against the amount of any use tax due a subdivision.

Exemption Certificates, Vendors May Rely.

2. Whenever a vendor receives and accepts in good faith from a purchaser a resale or other exemption certificate or other written evidence of exemption authorized by the appropriate state or subdivision taxing authority, the vendor shall be relieved of liability for a sales or use tax with respect to the transaction.

ARTICLE VI. The Commission.

Organization and Management.

1. (a) The Multistate Tax Commission is hereby established. It shall be composed of one "member" from each party state who shall be the head of the state agency charged with the administration of the types of taxes to which this compact applies. If there is more than one such agency, the state shall provide by law for the selection of the commission member from the heads of the relevant agencies. State law may provide that a member of the commission be represented by an alternate but only if there is on file with the commission written notification of the designation and identity of the alternate. The attorney general of each party state or his designee, or other counsel if the laws of the party state specifically provide, shall be entitled to attend the meetings of the commission, but shall not vote. Such attorneys general, designees, or other counsel shall receive all notices of meetings required under paragraph 1 (e) of this Article.

(b) Each party state shall provide by law for the selection of representatives from its subdivisions affected by this compact to consult with the commission member from that state.

(c) Each member shall be entitled to one vote. The commission shall not act unless a majority of the members are present, and no action shall be binding unless approved by a majority of the total number of members.

(d) The commission shall adopt an official seal to be used as it may provide.

(e) The commission shall hold an annual meeting and such other regular meetings as its bylaws may provide and such special meetings as its executive committee may determine. The commission bylaws shall specify the dates of the annual and any other regular meetings, and shall provide for the giving of notice of annual, regular and special meetings. Notice of special meetings shall include the reasons therefor and an agenda of the items to be considered.

(f) The commission shall elect annually, from among its members, a chairman, a vice chairman and a treasurer. The commission shall appoint an executive director who shall serve at its pleasure, and it shall fix his duties and compensation. The executive director shall be secretary of the commission. The commission shall make provision for the bonding of such of its officers and employees as it may deem appropriate.

(g) Irrespective of the civil service, personnel or other merit system laws of any party state, the executive director shall appoint or discharge such personnel as may be necessary for the performance of the functions of the commission and shall fix their duties and compensation. The commission bylaws shall provide for personnel policies and programs.

(h) The commission may borrow, accept or contract for the services of personnel from any state, the United States, or any other governmental entity.

(i) The commission may accept for any of its purposes and functions any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any governmental entity, and may utilize and dispose of the same.

(j) The commission may establish one or more offices for the transacting of its business.

(k) The commission shall adopt bylaws for the conduct of its business. The commission shall publish its bylaws in convenient form, and shall file a copy of the bylaws and any amendments thereto with the appropriate agency or officer in each of the party states.

(1) The commission annually shall make to the governor and legislature of each party state a report covering its activities for the preceding year. Any donation or grant accepted by the commission or services borrowed shall be reported in the annual report of the commission, and shall include the nature, amount and conditions, if any, of the donation, gift, grant or services borrowed and the identity of the donor or lender. The commission may make additional reports as it may deem desirable.

Committees.

(a) To assist in the conduct of its business when the full commission is not meeting, the commission shall have an executive committee of seven members, including the chairman, vice chairman, treasurer and four other members elected annually by the commission. The executive committee, subject to the provisions of this compact and consistent with the policies of the commission, shall function as provided in the bylaws of the commission.

(b) The commission may establish advisory and technical committees, membership on which may include private persons and public officials, in furthering any of its activities. Such committees may consider any matter of concern to the commission, including problems of special interest to any party state and problems dealing with particular types of taxes.

(c) The commission may establish such additional committees as its bylaws may provide.

Powers.

In addition to powers conferred elsewhere in this compact, the commission shall have power to:

(a) Study state and local tax systems and particular types of state and local taxes.

(b) Develop and recommend proposals for an increase in uniformity or compatibility of state and local tax laws with a view toward encouraging the simplification and improvement of state and local tax law and administration.

(c) Compile and publish information as in its judgment would assist the party states in implementation of the compact and taxpayers in complying with state and local tax laws.

(d) Do all things necessary and incidental to the administration of its functions pursuant to this compact.

Finance.

4. (a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-tenth in equal shares; and the remainder in proportion to the amount of revenue collected by each party state and its subdivisions from income taxes, capital stock taxes, gross receipts taxes, sales and use taxes. In determining such amounts, the commission shall employ such available public sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the sources used in obtaining information employed in applying the formula contained in this paragraph.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under paragraph 1 (i) of this Article: provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under paragraph 1 (i), the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any person authorized by the commission.

(f) Nothing contained in this Article shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VII. Uniform Regulations and Forms.

1. Whenever any two or more party states, or subdivisions of party states, have uniform or similar provisions of law relating to an income tax, capital stock tax, gross receipts tax, sales or use tax, the commission may adopt uniform regulations for any phase of the administration of such law, including assertion of jurisdiction to tax, or prescribing uniform tax forms. The commission may also act with respect to the provisions of Article IV of this compact.

2. Prior to the adoption of any regulation, the commission shall:

(a) As provided in its bylaws, hold at least one public hearing on due notice to all affected party states and subdivisions thereof and to all taxpayers and other persons who have made timely request of the commission for advance notice of its regulation-making proceedings.

(b) Afford all affected party states and subdivisions and interested persons an opportunity to submit relevant written data and views, which shall be considered fully by the commission.

3. The Commission shall submit any regulations adopted by it to the appropriate officials of all party states and subdivisions to which they might apply. Each such state and subdivision shall consider any such regulation for adoption in accordance with its own laws and procedures.

ARTICLE VIII. Interstate Audits.

1. This Article shall be in force only in those party states that specifically provide therefor by statute.
2. Any party state or subdivision thereof desiring to make or participate in an audit of any accounts, books, papers, records or other documents may request the commission to perform the audit on its behalf. In responding to the request, the commission shall have access to and may examine, at any reasonable time, such accounts, books, papers, records, and other documents and any relevant property or stock of merchandise. The commission may enter into agreements with party states or their subdivisions for assistance in performance of the audit. The commission shall make charges, to be paid by the state or local government or governments for which it performs the service, for any audits performed by it in order to reimburse itself for the actual costs incurred in making the audit.
3. The commission may require the attendance of any person within the state where it is conducting an audit or part thereof at a time and place fixed by it within such state for the purpose of giving testimony with respect to any account, book, paper, document, other record, property or stock of merchandise being examined in connection with the audit. If the person is not within the jurisdiction, he may be required to attend for such purpose at any time and place fixed by the commission within the state of which he is a resident provided that such state has adopted this article.
4. The commission may apply to any court having power to issue compulsory process for orders in aid of its powers and responsibilities pursuant to this article and any and all such courts shall have jurisdiction to issue such orders. Failure of any person to obey any such order shall be punishable as contempt of the issuing court. If the party or subject matter on account of which the commission seeks an order is within the jurisdiction of the court to which application is made, such application may be to a court in the state or subdivision on behalf of which the audit is being made or a court in the state in which the object of the order being sought is situated. The provisions of this paragraph apply only to courts in a state that has adopted this Article.
5. The commission may decline to perform any audit requested if it finds that its available personnel or other resources are insufficient for the purpose or that, in the terms requested, the audit is impracticable of satisfactory performance. If the commission, on the basis of its experience, has reason to believe that an audit of a particular taxpayer, either at a particular time or on a particular schedule, would be of interest to a number of party states or their subdivisions, it may offer to make the audit or audits, the offer to be contingent on sufficient participation therein as determined by the commission.
6. Information obtained by any audit pursuant to this Article shall be confidential and available only for tax purposes to party states, their subdivisions or the United States. Availability of information shall be in accordance with the laws of the states or subdivisions on whose account the commission performs the audit, and only through the appropriate agencies or officers of such states or subdivisions. Nothing in this Article shall be construed to require any taxpayer to keep records for any period not otherwise required by law.
7. Other arrangements made or authorized pursuant to law for cooperative audit by or on behalf of the party states or any of their subdivisions are not superseded or invalidated by this Article.
8. In no event shall the commission make any charge against a taxpayer for an audit.
9. As used in this Article, "tax," in addition to the meaning ascribed to it in Article II, means any tax or license fee imposed in whole or in part for revenue purposes.

ARTICLE IX. Arbitration.

1. Whenever the commission finds a need for settling disputes concerning apportionments and allocations by arbitration, it may adopt a regulation placing this Article in effect, notwithstanding the provisions of Article VII.
2. The commission shall select and maintain an arbitration panel composed of officers and employees of state and local governments and private persons who shall be knowledgeable and experienced in matters of tax law and administration.

3. Whenever a taxpayer who has elected to employ Article IV, or whenever the laws of the party state or subdivision thereof are substantially identical with the relevant provisions of Article IV, the taxpayer, by written notice to the commission and to each party state or subdivision thereof that would be effected, may secure arbitration of an apportionment or allocation, if he is dissatisfied with the final administrative determination of the tax agency of the state or subdivision with respect thereto on the ground that it would subject him to double or multiple taxation by two or more party states or subdivisions thereof. Each party state and subdivision thereof hereby consents to the arbitration as provided herein, and agrees to be bound thereby.

4. The arbitration board shall be composed of one person selected by the taxpayer, one by the agency or agencies involved, and one member of the commission's arbitration panel. If the agencies involved are unable to agree on the person to be selected by them, such person shall be selected by lot from the total membership of the arbitration panel. The two persons selected for the board in the manner provided by the foregoing provisions of this paragraph shall jointly select the third member of the board. If they are unable to agree on the selection, the third member shall be selected by lot from among the total membership of the arbitration panel. No member of a board selected by lot shall be qualified to serve if he is an officer or employee or is otherwise affiliated with any party to the arbitration proceeding. Residents within the jurisdiction of a party to the arbitration proceeding shall not constitute affiliation within the meaning of this paragraph.

5. The board may sit in any state or subdivision party to the proceeding, in the state of the taxpayer's incorporation, residence or domicile, in any state where the taxpayer does business, or in any place that it finds most appropriate for gaining access to evidence relevant to the matter before it.

6. The board shall give due notice of the times and places of its hearings. The parties shall be entitled to be heard, to present evidence, and to examine and cross-examine witnesses. The board shall act by majority vote.

7. The board shall have power to administer oaths, take testimony, subpoena and require the attendance of witnesses and the production of accounts, books, papers, records, and other documents, and issue commissions to take testimony. Subpoenas may be signed by any member of the board. In case of failure to obey a subpoena, and upon application by the board, any judge of a court of competent jurisdiction of the state in which the board is sitting or in which the person to whom the subpoena is directed may be found may make an order requiring compliance with the subpoenas, and the court may punish failure to obey the order as a contempt. The provisions of this paragraph apply only in states that have adopted this Article.

8. Unless the parties otherwise agree, the expenses and other costs of the arbitration shall be assessed and allocated among the parties by the board in such manner as it may determine. The commission shall fix a schedule of compensation for members of arbitration boards and of other allowable expenses and costs. No officer or employee of a state or local government who serves as a member of a board shall be entitled to compensation therefor unless he is required on account of his service to forego the regular compensation attaching to his public employment, but any such board member shall be entitled to expenses.

9. The board shall determine the disputed apportionment or allocation and any matters necessary thereto. The determinations of the board shall be final for purposes of making the apportionment or allocation, but for no other purpose.

10. The board shall file with the commission and with each tax agency represented in the proceeding: the determination of the board; the board's written statement of its reasons therefor; the record of the board's proceedings; and any other documents required by the arbitration rules of the commission to be filed.

11. The commission shall publish the determinations of boards together with the statements of the reasons therefor.

12. The commission shall adopt and publish rules of procedure and practice and shall file a copy of such rules and of any amendment thereto with the appropriate agency or officer in each of the party states.

13. Nothing contained herein shall prevent at any time a written compromise of any matter or matters in dispute, if otherwise lawful, by the parties to the arbitration proceedings.

ARTICLE X. Entry Into Force and Withdrawal.

1. This compact shall enter into force when enacted into law by any seven states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof. The commission shall arrange for notification of all party states whenever there is a new enactment of the compact.
2. Any party state may withdraw from this compact by enacting a statute repealing the same. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.
3. No proceeding commenced before an arbitration board prior to the withdrawal of a state and to which the withdrawing state or any subdivision thereof is a party shall be discontinued or terminated by the withdrawal, nor shall the board thereby lose jurisdiction over any of the parties to the proceeding necessary to make a binding determination therein.

ARTICLE XI. Effect on Other Laws and Jurisdiction.

Nothing in this compact shall be construed to:

(a) Affect the power of any state or subdivision thereof to fix rates of taxation, except that a party state shall be obligated to implement Article III 2 of this compact.

(b) Apply to any tax or fixed fee imposed for the registration of a motor vehicle or any tax on motor fuel, other than a sales tax: provided that the definition of "tax" in Article VIII 9 may apply for the purposes of that Article and the commission's powers of study and recommendation pursuant to Article VI 3 may apply.

(c) Withdraw or limit the jurisdiction of any state or local court or administrative officer or body with respect to any person, corporation or other entity or subject matter, except to the extent that such jurisdiction is expressly conferred by or pursuant to this compact upon another agency or body.

(d) Supersede or limit the jurisdiction of any court of the United States.

ARTICLE XII. Construction and Severability.

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

Section 2. The chairman of the state board of equalization shall represent this state on the Multistate Tax Commission.

Section 3. The member representing this state on the Multistate Tax Commission may be represented thereon by an alternate designated by him who must be a member of the state board of equalization.

Section 4. There is hereby established the Multistate Tax Compact advisory committee composed of the member of the Multistate Tax Commission representing this state or any alternate designated by him, the attorney general or his designee, and two members of the senate, one (1) from each of the two (2) major political parties appointed by the senate committee on committees, and two (2) members of the house of representatives, one (1) from each of the two (2) major political parties, appointed by the speaker of the house. The chairman shall be the member of the commission representing this state. Members of the commission who are members of the Legislative Assembly shall be reimbursed for actual and necessary expenses incurred on commission business from any funds appropriated to implement this compact. The committee shall meet on the call of its chairman or at the request of a majority of its members, but in any event it shall meet not less than three (3) times in each year. The committee may consider any and all matters relating to recommendations of the Multistate Tax Commission and the activities of the members in representing this state thereon.

APPENDIX B

_____ BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO SUBJECT CORPORATIONS IN MONTANA TO EITHER A CORPORATION INCOME TAX OR A CORPORATION LICENSE TAX, BUT NOT BOTH."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. It is the intent of the legislative assembly that the corporation license tax shall be applied to all corporations subject to taxation under Chapter 15, Title 84, R.C.M. 1947. The income tax provided by this act shall be applied to corporations that are not taxable under Chapter 15, Title 89, R.C.M. 1947 but are taxable under an income tax.

Section 2. This act shall be known as and may be cited as the "Corporation Income Tax" and it shall be administered by the state board of equalization.

Section 3. (1) There is hereby imposed upon every corporation for each taxable year an income tax at the rate specified in section 84-1501, R.C.M. 1947 upon its net income derived from sources with this state for taxable years beginning after December 31, 1968, other than income for any period for which the corporation is subject to taxation under Chapter 15, Title 84, R.C.M. 1947, according to or measured by its net income.

(2) Income from sources within this state includes income from tangible or intangible property located in or having a situs in this state and income from any activities carried on in this state, regardless of whether carried on in intrastate, or interstate or foreign commerce.

Section 4. There shall be offset against the corporation income tax imposed for any period the amount of any tax imposed against it for the same period under Chapter 15, Title 84, R.C.M. 1947. In the event that taxes, interest and penalties have been or will be assessed against, paid by or collected from a corporation under this chapter, which assessment, payment or collection should have been made under Chapter 15, Title 84, R.C.M. 1947, such taxes, interest and penalties shall be considered as having been assessed, paid or collected under Chapter 15, Title 84, R.C.M. 1947 as of the date they were made.

Section 5. When a corporation formerly subject to tax under Chapter 15, Title 84, R.C.M. 1947, becomes subject to tax under this act, it shall file an information return for the income year in which the change occurs. The tax for the year in which the change occurs will be assessed under Chapter 15, Title 84, R.C.M. 1947 and not under this act. For years subsequent to the year in which the change occurs, the tax will be assessed under this act.

Section 6. The provisions of the following sections of Chapter 15, Title 84, R.C.M. 1947 are incorporated into this act by reference and made a part thereof:

(1) That part of section 84-1501, R.C.M. 1947 which defines the term "corporation" and the part which specifies the classes of organizations whose income shall not be taxed;

(2) Section 84-1501.4, 84-1502, 84-1503, and 84-1504, R.C.M. 1947 except that wherever the words "license fee" appear there shall be substituted the words "income tax," and the term "gross income" shall be construed as excluding interest income exempt from taxation under federal law;

(3) Sections 84-1505, 84-1505.1, and 84-1506, R.C.M. 1947 except that where the words "license fee" appear there shall be substituted the words "income tax;"

(4) Sections 84-1507, 84-1508, 84-1508.1, 84-1508.2, 84-1509, and 84-1510, R.C.M. 1947 except that wherever the words "corporation excise tax" appear there shall be substituted the words "income tax;"

(5) Sections 84-1512, 84-1513, 84-1516, 84-1517, and 84-1518, R.C.M. 1947.

Section 7. The state board of equalization may employ personnel and adopt rules, regulations and forms as the board finds necessary to place this act in operation and to carry out its provisions.

Section 8. The net revenue from the tax imposed by this act shall be disposed of in the same manner as revenue from the corporation license tax as provided in Section 84-1901, R.C.M.1947.

Section 9. This act is effective upon its passage and approval.

APPENDIX C

_____ BILL NO. _____

INTRODUCED BY _____

84-1508.2, 84-1517

A BILL FOR AN ACT ENTITLED: " AN ACT TO REQUIRE CORPORATIONS TO FILE REPORTS OF CHANGES IN FEDERAL TAXABLE INCOME, TO PROVIDE FOR EXTENDING THE TIME FOR ASSESSMENT OF TAX WHEN THE REQUIRED REPORTS ARE NOT FILED AS PRESCRIBED AND TO REQUIRE THE FILING OF COPIES OF FEDERAL INCOME TAX RETURNS UPON REQUEST BY THE STATE BOARD OF EQUALIZATION; AMENDING SECTIONS 84-1508.2 and 84-1517, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 84-1508.2, R.C.M. 1947, is amended to read as follows:

"84-1508.2. Periods of limitation - limitations for notification of additional tax extended if taxpayer fails to report change in federal tax-waiver. (1) Except as otherwise provided in this section and in section 84-1513, R.C.M. 1947 no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax proposed to be assessed is mailed within five (5) years from the date the return was filed. For purposes of this section a return filed before the last day prescribed for filing shall be considered as filed on ~~that~~ such last day. Where before the expiration of the period prescribed for assessment of the tax, the taxpayer consents in writing to an assessment after the time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The limitations prescribed for giving notice of a proposed assessment of additional tax shall not apply when a taxpayer has failed to file a report of changes in federal taxable income or an amended return as required by section 84-1517, R.C.M. 1947 until five (5) years after the federal changes become final or the amended federal return was filed, whichever the case may be.

(2) No refund or credit shall be allowed or paid with respect to the year for which a return is filed after five (5) years from the last day prescribed for filing the return or after one (1) year from the date of the overpayment, whichever period expires the later, unless before the expiration of such period the taxpayer filed a claim therefor or the state board of equalization has determined the existence of the overpayment and has approved the refund or credit thereof. If the taxpayer has agreed in writing under the provisions of subsection (1) of this section to extend the time within which the state board of equalization may propose an additional assessment, the period within which a claim for refund or credit may be filed, or a credit or refund allowed in the event no claim is filed, shall automatically be so extended."

Section 2. Section 84-1517, R.C.M. 1947 is amended to read as follows:

"84-1517. Failure to make return - estimate and investigation of net income - copy of federal return to be furnished on request - report of change in federal tax - copy of amended federal returns. ~~(a)~~ (1) If any taxpayer fails to make return as herein required, the state board of equalization is authorized to make an estimate of the taxes due from such taxpayer from any information in its possession.

~~(b)~~ (2) The state board of equalization, for the purpose of ascertaining the correctness of any return or for the purpose of making an estimate of net income of any corporations where information has been obtained, shall also have power to examine or to cause to have examined by any agent or representative designated by it for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of any officer or employee of the corporation rendering such return or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for its information.

(3) Every corporation shall, upon request of the state board of equalization, furnish a copy of its federal income tax return and the computation schedule filed for such taxable year or years as the said board may specify in its request. If the amount of a corporation taxable income reported on its federal income tax return or the

computation schedule filed for any taxable year is changed or corrected by the United States Internal Revenue Service or other competent authority, the corporation shall report such change or correction to the state board of equalization within ninety (90) days after receiving official notice thereof. Any corporation filing an amended federal income tax return changing or correcting its taxable income for any taxable year shall also file an amended return with the state board of equalization within ninety (90) days thereafter."

Section 3. This act is effective on its passage and approval.

APPENDIX D

_____BILL NO._____

INTRODUCED BY _____

84-1503

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 84-1503, R.C.M. 1947, TO PROHIBIT TAXPAYERS FROM ARBITRARILY CHANGING A METHOD OF ALLOCATING OR APPORTIONING INCOME TO GAIN A TAX ADVANTAGE AND DELETING THE REQUIREMENT THAT THE STATE BOARD OF EQUALIZATION PUBLISH ONCE A YEAR ALL RULES AND REGULATIONS RELATING TO SECTION 84-1503, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 84-1503, R.C.M. 1947, is amended to read as follows:

"84-1503. Segregation of income within and without state. If the income of any corporation from sources within the state cannot be properly segregated from income without the state, then, in that event, the amount of net income returned shall be that proportion of the taxpayer's total net income which the taxpayer's gross business done in the state of Montana bears to the total gross business of the taxpayer, and apportionment shall be made under the rules and regulations prescribed by the state board of equalization, giving consideration to sales, property and payroll and such other factors as may be deemed applicable; provided, however, that the state board of equalization shall, upon the presentation of satisfactory evidence, determine that the income from sources within the state of Montana may be properly segregated from income from sources without the state of Montana and shall allow separate accounting. The board shall publish ~~not less than once a year~~, all rules and regulations and all changes in rules and regulations pertaining to this section. All decisions by the board under this section shall be subject to judicial review in an action prosecuted by the corporation in the district court of Lewis and Clark county. The taxpayer ~~cannot~~ may not change from one method of ~~accounting~~ determining income derived from or attributable to sources within this state to another method of accounting without first obtaining permission from the board."

APPENDIX E

_____ BILL NO. _____

INTRODUCED BY _____

84-1509

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 84-1509, R.C.M. 1947, TO REQUIRE THAT ONLY AFFILIATED CORPORATIONS WHOSE OPERATIONS CONSTITUTE A SINGLE UNITARY BUSINESS OPERATION MAY FILE A CONSOLIDATED CORPORATION INCOME TAX RETURN; AND FURTHER REQUIRE THAT TO REQUEST USE OF A CONSOLIDATED RETURN AT LEAST EIGHTY PER CENT OF ALL CLASSES OF STOCK OF EACH CORPORATION MUST BE OWNED DIRECTLY OR INDIRECTLY BY ONE OR MORE MEMBERS OF THE AFFILIATED GROUP."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 84-1509, R.C.M. 1947 is amended to read as follows:

"84-1509. Consolidated returns - computation and procedure on. ~~(a) Corporations which are affiliated may, if authorized, and shall, if required, by the state board of equalization, under regulations preseribed by said board, make a consolidated return for the purpose of this act. In any case in which a tax is assessed upon the basis of a consolidated return, the total tax shall be computed in the first instance as a unit and shall then be assessed upon the respective affiliated corporations in such proportions as may be agreed upon among them, or in the absence of any such agreement, then on the basis of the net income properly assignable to each.~~

(1) Corporations which are affiliated may not file a consolidated return unless at least eighty percent (80%) of all classes of stock of each corporation involved is owned directly or indirectly by one (1) or more members of the affiliated group.

(2) Corporations may not file a consolidated return unless the operation of the affiliated group constitutes a single unitary business operation as defined by the state board of equalization and permission to file a consolidated return is given by the state board of equalization.

(3) If the conditions of subsections (1) and (2) of this section are met, the state board of equalization may require corporations to file a consolidated return when the board considers a consolidated return necessary.

~~(b)~~ (4) Any corporation liable to report under this act and owning, or controlling, either directly or indirectly, ~~substantially all of the capital stock of another corporation, or of other corporations,~~ at least eighty percent (80%) of all classes of stock of each corporation involved, may be required to make a consolidated report showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state board of equalization may require, but excluding intercorporate stockholdings and intercorporate accounts. Any corporation liable to report under this act and owned or controlled, either directly or indirectly, by another corporation may be required to make a report consolidated with the owning company, showing the combined net income, such assets of the corporation as are required for the purposes of this act, and such other information as the state board of equalization may require, but excluding intercorporate stockholdings and intercorporate accounts. In case it shall appear to the state board of equalization that any arrangement exists in such a manner as to improperly reflect the business done, the segregable assets or the entire net income earned from business done in this state, the state board of equalization is authorized and empowered, in such manner as it may determine, to equitably adjust the tax."

APPENDIX F

_____BILL NO._____

INTRODUCED BY_____

84-1501.3, 84-1502, 84-1504

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 84-1504, R.C.M. 1947, RELATING TO THE CORPORATION LICENSE TAX, BY DELETING THE DEFINITION OF GROSS INCOME AND ADOPTING INSTEAD THE FEDERAL INCOME TAX DEFINITION OF 'TAXABLE INCOME;' AND DELETING REFERENCE TO THE CORPORATION'S TAXABLE YEAR AND REPORTING PERIOD AND ADOPTING THE FEDERAL TAXABLE YEAR; AND REPEALING SECTIONS 84-1501.3 AND 84-1502, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. Section 84-1504, R.C.M. 1947 is amended to read as follows:

"84-1504. Computation of license tax - return of net income to be filed. ~~(1) The license fee shall be computed upon the total net income of the corporation received within each preceding calendar year ending December 31, provided, that any corporation subject to this license fee may designate the last day of any month in the year as the day of the close of its fiscal year, and shall be entitled to have the license fee payable by it computed upon the basis of the net income ascertained as herein provided for the year ending on the day so designated in the year preceding the date of assessment, instead of upon the basis of the net income for the calendar year preceding the date of assessment, and it shall give notice to the state board of equalization of the day it has thus designated as the close of its fiscal year, at any time not less than thirty (30) days prior to the time its return would be filed if made upon the basis of the calendar year.~~

(1) The license tax shall be computed on the basis of the corporation's total net income derived from or attributable to sources within Montana during its taxable period. The corporation's taxable period shall be its taxable year as defined in section 441 of the Internal Revenue Code of 1954, or as that section may be labeled or amended. In the event the corporation changes its taxable year, it shall promptly so notify the state board of equalization. The term 'net income' means taxable income as defined for corporations under section 63(a) of the Internal Revenue Code in effect for the taxable period, with the following modifications:

(a) There shall be added to federal taxable income;

(i) interest income exempt from federal income tax,

(ii) Montana corporation license tax deducted in determining federal taxable income,

(iii) the deductions provided for under sections 172, 242, 243, 244, and 245 of the Internal Revenue Code of 1954, or as those sections may be amended.

(iv) contributions deducted in determining federal taxable income which were carried over from a taxable period which began prior to the effective date of this modification,

(v) a net capital loss carried over from the year incurred.

(b) There shall be deducted from federal taxable income;

(i) refunds of Montana corporation license tax included in federal taxable income,

(ii) the excess of losses from sales or exchanges of capital assets over the gains from such sales or exchanges during the taxable period,

(iii) taxes paid to a foreign country or to a possession of the United States which, with respect to the taxable period, the corporation elects to credit against its Federal Income Tax Liability in lieu of claiming as a deduction in determining taxable income.

(c) The definition of net income shall not be construed as exempting any corporation from this tax.

(2) Every corporation, subject to ~~the~~ this license ~~fee~~ tax ~~herein imposed~~, shall for each ~~year~~ taxable period ~~hereafter, for the year ending on the thirty first day of December, or for its fiscal year selected under the provisions hereof~~, render a true and accurate return of its ~~annual~~ net income in the manner and form to be prescribed by the state board of equalization, ~~and~~ containing such facts, data and information as are appropriate and in the opinion of the state board of equalization necessary to determine the correctness of the net income returned and to carry out the provisions of this act. The return shall be signed by one of the following: the president, the vice president, ~~or other principal officer, and by~~ the treasurer, the assistant treasurer, or the chief accounting officer. If the corporation is reporting on a calendar year basis, the return shall be filed with the state board of equalization on or before the fifteenth day of May ~~in each year~~, following the close of the calendar year, and if reporting on a fiscal year basis the return shall be filed with said board on or before the fifteenth day of the fifth month following the close of its fiscal year. Upon application a corporation shall be allowed an automatic extension of time for filing its return to the fifteenth day of the third month following the date prescribed for filing of its tax return. The application is to be made on such forms as the board of equalization ~~shall~~ may prescribe. The board of equalization may grant additional extension of time for the filing of a return whenever in its judgment good cause exists. ~~The term gross income means the income from all sources within the state of Montana recognized in the determination of the corporation's federal income tax liability but shall include interest exempt from federal income tax. The term 'net income' means the gross income of the corporation less the allowable deductions. However, the definitions of gross income and net income set forth in this section shall not be construed as allowing the deductions set forth in section 243 of the Federal Internal Revenue Code as now written, or as that section shall be labeled or amended. The term 'fiscal year' means an accounting period of twelve (12) months ending on the last day of any month other than December.~~

(3) In cases wherein receivers, trustees in bankruptcy, or assignees are operating the property or business of a corporation subject to the license ~~fee~~ tax imposed by this act, such receiver, trustee, or assignee shall make the return in the same manner and form as such corporation is hereinbefore required to make return, and any license ~~fee~~ tax due on the basis of such returns made by the receiver, trustee, or assignee, shall be assessed and collected in the same manner as if assessed directly against the corporation of whose business or property they have custody and control, and shall be paid by such receiver, trustee, or assignee out of the property of the company in his hands, prior to the claims of creditors or stockholders."

Section 2. Sections 84-1501.3 and 84-1502, R.C.M. 1947 are repealed.

Section 3. This act is effective with respect to taxable years beginning after June 30, 1969.

APPENDIX G

_____ BILL NO._____

INTRODUCED BY_____

A BILL FOR AN ACT ENTITLED: " AN ACT TO ENABLE OTHER STATES OF THE UNITED STATES AND THEIR POLITICAL SUBDIVISIONS TO MAINTAIN SUITS IN THE COURTS OF THIS STATE TO RECOVER TAXES."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. As used in this act:

(1) "State" includes any state, territory or possession of the United States and the District of Columbia.

(2) "Tax" includes any and all assessments lawfully made, whether based on a return or other disclosure of the taxpayer, upon the information and belief of the taxing authority, or otherwise; any and all penalties lawfully imposed pursuant to a taxing statute; and any interest charges lawfully added to the tax liability which constitutes the subject of the action.

Section 2. Any state of the United States or any political subdivision thereof shall have the right to sue in the courts of this state to recover any tax which may be owing to it when the like right is accorded to this state and its political subdivisions by such other state. The certificate of the secretary of state of such other state to the effect that the officials of such other state and its political subdivisions have the authority to collect the taxes to be collected is conclusive proof of that authority.

APPENDIX H

_____ BILL NO._____

INTRODUCED BY_____

A BILL FOR AN ACT ENTITLED: "AN ACT WHICH EMPOWERS THE STATE BOARD OF EQUALIZATION TO REQUIRE IMMEDIATE PAYMENT OF A TAX OR DEFICIENCY DUE UNDER ANY CORPORATION LICENSE OR INCOME TAX STATUTE OF MONTANA IF THE BOARD FINDS THAT THE COLLECTION OF THE TAX OR DEFICIENCY WILL BE JEOPARDIZED IN WHOLE OR IN PART BY DELAY."

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF THE STATE OF MONTANA:

Section 1. If the state board of equalization finds that the assessment or collection of the tax or a deficiency in tax due under any corporation license or income tax statute of Montana for any taxable period will be jeopardized in whole or in part by delay, it may mail notice of its findings to the taxpayer together with a demand for immediate payment of the tax or deficiency declared to be in jeopardy, including penalty and accrued interest. In the case of a tax for a current period, the board may declare the taxable period of the taxpayer immediately terminated, and shall mail or issue notice of its findings to the taxpayer together with a demand for immediate payment of the tax based on the period declared terminated. A jeopardy assessment is immediately due and payable, and proceedings for collection may be commenced at once.